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JUNE
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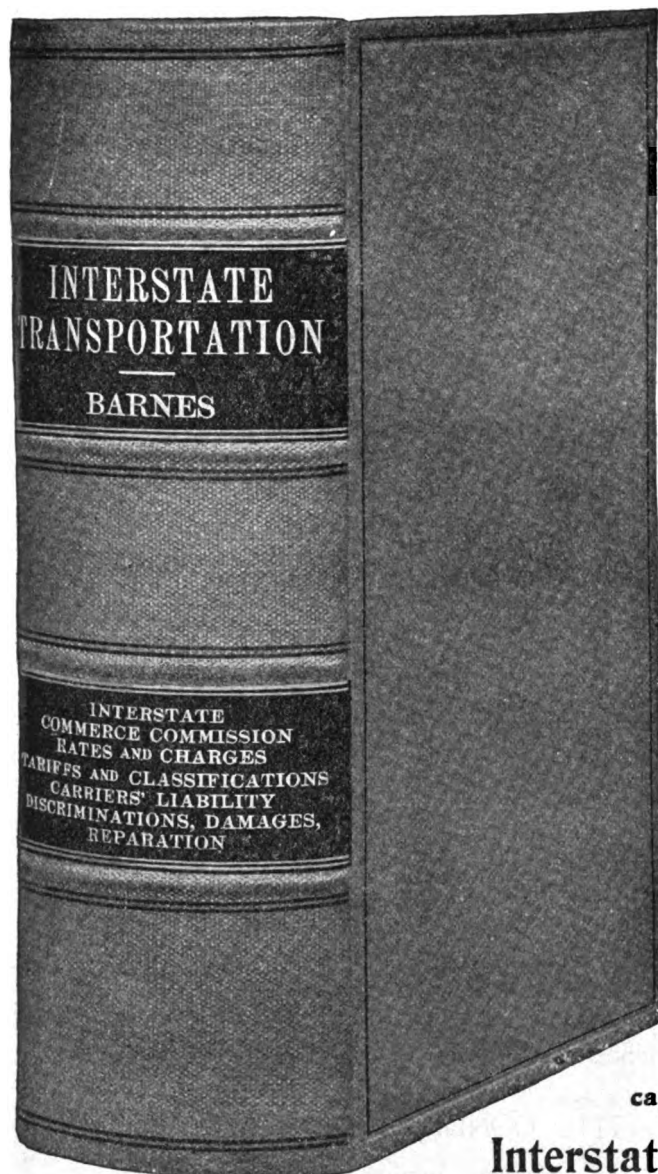
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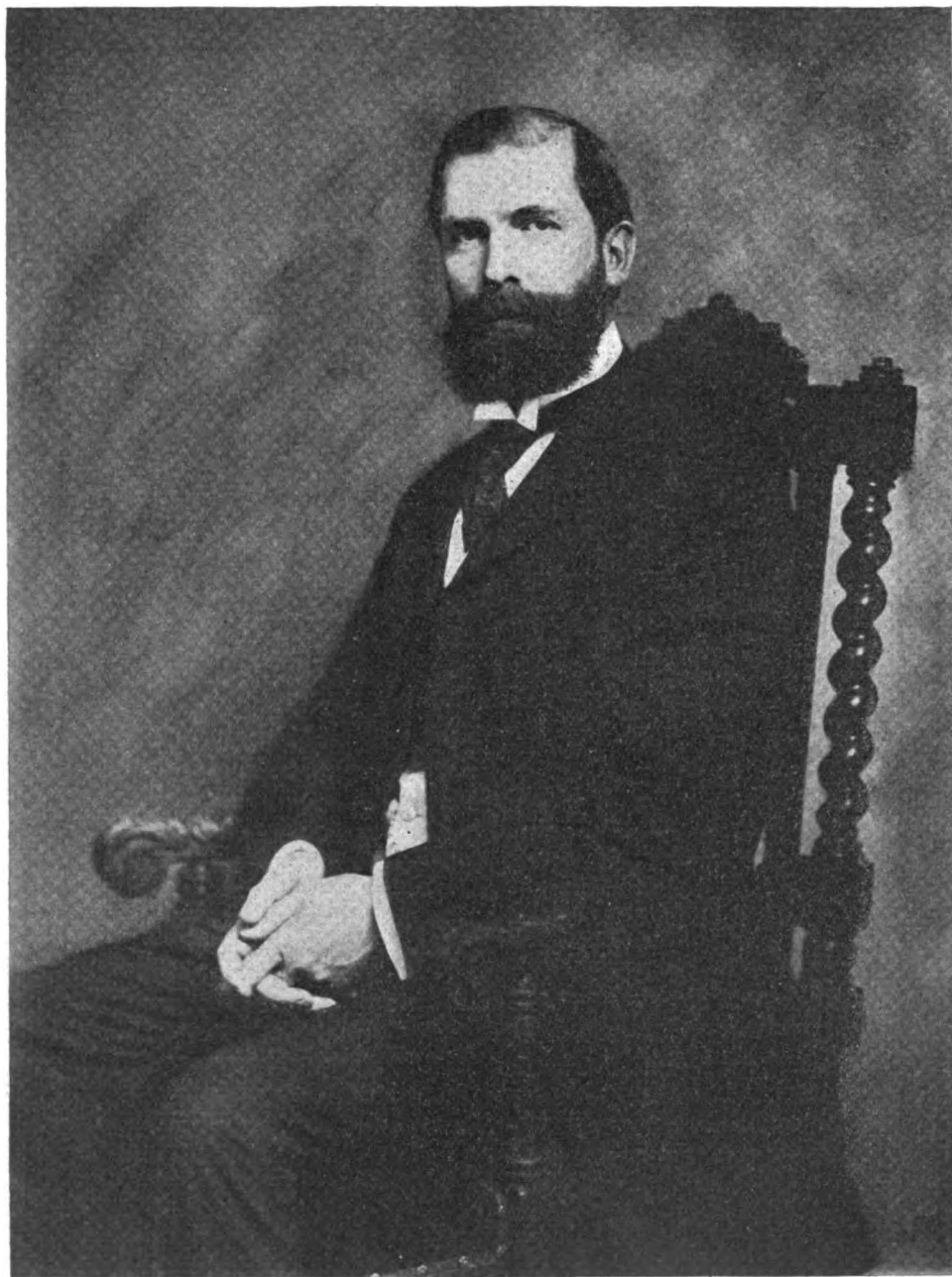
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AT THE conference of governors held in Washington, District of Columbia, on January 18th last, Mr. Hughes thus expressed himself on the subject of uniform laws: "There are subjects which under the Constitution can be dealt with only by the states, and where the diversities of state law are not required by any proper view of state policy. While the authority is local the interests affected are not exclusively local. The existing diversities reflect a difference in tradition, but not an essential difference in interest. They have grown up through contrariety in judicial opinion or in legislation. They represent simply an individualizing tendency which fails to regard the conveniences of commercial intercourse."

¶ "To secure uniformity of legislation, no sacrifice is required other than perhaps of local pride of opinion or of accustomed practice. For example, without attempting to be comprehensive, I may mention the law of negotiable instruments and the rules governing the transactions of trade, such as are involved in the law of sales, of bills of lading, of warehouse receipts, and of stock certificates. No state has any particular interest in maintaining existing diversities with respect to the general incidents of commercial intercourse, and the common convenience of uniformity of regulation is too obvious to require arguments in its support."

¶ "Gradually enlarging the scope and forming the habit of agreement, we may expect to come to uniform legislation in matters of status, such as legitimacy and divorce. Where the matter is not one involving in its nature a separate local interest, and diversities in laws give rise to needless embarrassments, we should show our capacity to make progress in the art of government by removing them."



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HON. CHARLES EVANS HUGHES
THE NEW ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. Justice Hughes

An Upright and Fearless Public Servant

BY THE EDITOR

THE appointment by the President of Governor Charles Evans Hughes of New York, to succeed Justice Brewer on the Supreme bench of the United States, is very generally and heartily approved. All classes and conditions of men subscribe to the wisdom and fitness of the choice, and even those who have not been in sympathy with certain of Governor Hughes's policies admit that he brings to the Federal bench a splendid legal talent, a forceful energy, and an exalted honesty that unite to make him an ideal justice.

We believe that nowhere in the United States is there a man to be found better fitted to serve upon the Supreme bench than Charles E. Hughes. He has the clear, calm mind of an ideal judge, and the quiet, firm devotion to principle of an ideal American citizen. Unaffected by either the thoughtless clamor of the mob or the secret and sinister influences that have so long infected our partisan politics, he has won the confidence of the people of the greatest state in the Union, without distinction of party or class. He has won this great esteem and confidence by conduct which is, in the best sense of the word, judicial. His natural temperament, combined with his powers as a lawyer, will make him as great an interpreter of the law, as he has shown himself to be a great administrator.

His Legal Ability.

Governor Hughes is one of the most distinguished lawyers appointed to the Supreme bench in recent years. To the public his distinction rests upon his connection with the insurance investigation, which made him governor; but the profession recognized on that occasion simply the exhibition of qualities with which it had long been familiar. Charles E. Hughes was a name of no meaning to the laity, for its possessor had been immersed in a branch of the law which affords few opportunities for forensic display. As a specialist in commercial law he had been brought into close relation with the bar of many cities. He often managed the "New York end" of cases which had relations to other communities. In the consultations involved, his associates were always impressed by the clear rapidity with which he grasped an immense mass of details, and from it extracted the core on which a complicated case turned.

But it would be unfortunate, indeed, if the Supreme Court were made up of men notable only for their deep knowledge of the law. The members of the Supreme Court ought to be men who have rubbed elbows with other men sufficiently to have a wide view of life and its responsibilities. Twice elected governor of New York, Mr. Hughes has had sufficient experience in public life fully to understand the interaction of social

forces and of conflicting interests. He has not been able to carry out in its entirety the program which he mapped out for his party in his state, but he has accomplished much.

His Political Reforms.

Into his few years at Albany, Governor Hughes has crowded many substantial reforms for the government of New York state. More than this, he has infused the office with a new spirit. He has shown himself a governor in deeds, as well as in name. At times he has appeared puritanical. But always he has stood for political righteousness and political sanity. He has not hesitated to protect corporations when they were entitled to protection, but he has ever held the rights and welfare of the whole people supreme. He has forced a sweeping investigation of the corruption which was recently disclosed in the Republican party of his state,—his own party. He routed the forces of organized politics, root and branch, and put men in office who served the people, and not any special interests. From the beginning of his administration, Governor Hughes advocated the enactment of measures in the interest of the people. He compelled the enactment of his public service commission bill; he forced the passage of the anti-race-track gambling bill; he opposed the machine politicians at every turn, and when they essayed to block his legislation, he appealed to the people, and was re-elected. Since the commencement of his second term Governor Hughes has been fighting for a direct primary law, and for other measures designed to eliminate "boss" domination. In reliance upon his advice the New York assembly recently refused to ratify the income tax amendment to the Federal Constitution.

¶ To me, a lawyer, the Supreme Court of the United States is the most sacred thing that we have in this government, and the appointment of men to that bench is the highest and most sacred function that the Executive has to perform.

—President Taft.

Mr. Justice Hughes has exalted the governorship and the service of the state. No lawyer can maintain hereafter that to take office as a matter of public duty will necessarily injure him professionally. He has set the standard of official integrity, fidelity, and courage so high that, whatever decadence may succeed his retirement, it can hardly again fall to the level that preceded his entrance upon public life.

Effect of His Appointment.

That so splendid a moral force, so rare an executive, and so unselfish a patriot, should be removed from the sphere of statesmanship, even by appointment to so exalted a position as the bench of our highest tribunal, appears to be a severe blow to the movement for the reform of our political conditions. The judge is necessarily excluded from the arena. His voice may be heard occasionally, as was Justice Brewer's, in the forum or the pulpit, or on the platform. But when Governor Hughes takes his seat in Washington, a great educative force will be lost. That tremendous driving power which, coupled with his downright earnestness and sincerity, has twice convinced the state where its best interests lay, together with his unusual executive ability, will fall into disuse. The strongest force for reform—strongest because of wise radicalism allied with a judicial temperament—is now to go out of our workaday political life.

It is well, however, to recall that John Marshall, before he became chief justice, was foreign minister, Secretary of War, and Secretary of State. Many in the Federalist party regarded him as the only man competent to wage equal battle with Jefferson, and they bewailed his withdrawal from political life. Yet it will be conceded that John Marshall did not only well for himself, but well for his coun-

try, by becoming a judge, and embarking on thirty-four years of luminous service. Nothing will contribute more to the perpetuity of American institutions than wisdom on the Supreme Court bench during the next twenty years. We should not underestimate the value of the services Mr. Hughes can render as a member of that body. Questions of far-reaching moment, calling for another Marshall, are coming before the Court, and will continue to come before it, testing our written Constitution as it has never been tested before. That the court needs vigorous, active personalities, men of sound judicial training coupled with a clear understanding of the underlying political forces of the day, is undeniable.

**Growing Importance of
Supreme Court.**

The excitement and publicity of political service must not blind us to the solemn truth that the most essential bulwark of our liberties is the judiciary. It is there, above everything else, that poise, integrity, discernment, and high intellect must keep the Republic true to its past tradition and future destiny. The people have come to recognize where the final interpretation of true Democracy must lie. The Supreme Court of the United States is the one sure intrenchment of constitutional liberty as it is known in America. The composition of that court is of vastly greater moment than the choice of a President or of both houses of Congress. The rights of every citizen of the United States, expressed in the laws and Constitutions of the states and of the Federal Union, rest in the final analysis of our institutions, in the hands of the justices of the Supreme Court of

the United States. There is no escape from this conclusion. Upon the judicial intelligence, the calmness, the fearlessness, and the personal honor of the men who constitute this tribunal, depend the future of law, liberty, and a government of laws in this country.

Governor Hughes's intimate familiarity with statutes governing commercial and industrial relations will stand him and the United States in good stead on the Supreme Court. More and more, year by year, the public service questions of the nation are made the subject of judicial definition. Whether we like it or not, the Federal judicial power is expanding, and the Supreme Court and its subordinate tribunals are becoming arbitral in industrial controversies. As Mr. Justice Hughes, without being radical, is progressive in his views of public supervision of

I am delighted to be the means of bringing to that court such a man [Gov. Hughes], an able lawyer, a jurist, a statesman and administrator, a man of affairs. His going upon the bench strengthens the court both in judicial ability and quality and in public confidence.

—President Taft.

public utilities, his participation in the deliberations of the Court will represent the newer school of legal thought, which weighs precedents with reference to the environment of times and conditions.

Providence permitting, Charles E. Hughes will be a power in shaping American institutions long after the President that named him has retired from public life, and the ephemeral questions that vex our political life have been settled or forgotten. He must have given due value to such considerations when he made a personal financial sacrifice to accept the appointment. It is said on good authority that he could have commanded yearly fees amounting to \$75,000 by returning to private practice. To prefer, under such circumstances and from a sense of public duty, a judgeship paying but \$12,500 per year, is characteristic of the man.

Business Government for Cities

BY BURDETT A. RICH

A REVOLUTION, or at least a rebellion, has been going on in many cities of this country during the last decade or more. Reform movements break out here and there, and win occasional victories. But these are usually temporary. Something more than spasmodic upheavals is needed, if we are to get any effective and lasting reformation. To overthrow a political organization by a popular uprising can be done only when the people are stirred in some extraordinary way, by fresh revelations of corruption or misgovernment. The evils that exist, the defects in our municipal charters and organizations, the incompetence or worse of city officials, and the possibility and prospect of securing honest and efficient government, deserve the earnest attention of every citizen.

Is it true that our cities are in great need of political reform? Muck rakers can easily present the bad side of the conditions anywhere, even in the most favored locality, in a way that would shock one who reads the account. Nations, communities, churches, human organizations of any kind, and even the best of individual persons, have enough imperfections to make a bad picture when those failings or defects alone are set out with vivid description, with no mention of anything good. The tendency to overstate and paint pictures in high colors, in which many reformers indulge, may often make us wonder how much real justice there is in the lurid stories of depravity and rottenness in our large cities. But the facts are beyond doubt. They are within the personal knowledge of multitudes of citizens. Our statesmen best qualified to judge confess that we have the worst governed cities in the world. Revelations of graft in one city

after another have not only led to many convictions of boodler aldermen and their allies in plunder, but have shown that their corruption was part of a widespread and organized system. Ali Baba's Forty Thieves, and other bands of historical or mythical robbers, were outlaws who fought with or fled from the officers of the law; but our modern bands of city plunderers have been officers themselves. It has been shown in city after city that a regular system of graft had been established, by which no ordinance, franchise, or other act that would be either valuable or injurious to anybody, could be passed without bribery. A vast system of levying tribute on saloons, disorderly houses, and every other law-breaking establishment, has yielded enormous sums of money to officials, high and low, for their own secret enrichment and the entrenchment of their political organization. The shame of the situation is almost universally recognized, yet nearly every city contends that the corruption is mostly in other places. Good citizens, uncomfortably conscious that things are not right under the surface, refuse to believe that their own officials can possibly be as bad as those in other cities are proved to be.

The men who govern a city, however good or bad its charter or system may be, must in large degree determine the quality of its government. Are the men who make up the common councils, and fill the other responsible positions in our city governments, usually fitted by ability and character for such responsibility? Has their capacity been demonstrated in any large affairs of their own? Would they be trusted to deal with any private business of large magnitude? Let anyone take the list of aldermen, common councilmen, or other officers who decide most of the great questions of a city's business, and

see how they individually rank among citizens of first-rate ability and character. The truth is that business affairs running to millions of dollars per year, questions of large public policy, matters of life, health, morals, and almost everything that concerns the welfare of the people, are intrusted to bodies of men whose own business experience in many instances has been limited to such minor enterprises as a small shop or saloon. Indeed, no small share of these officials seek the office in order to supplement their meager incomes with a salary of a few hundred dollars. How many of them would be trusted as managers or directors in private business enterprises of a magnitude even remotely approaching the affairs of a city? The conspicuously obvious fact is that the first requisite of enlightened, efficient, and businesslike city government is to intrust the business to men of high character and exceptional ability. The question is how to get them.

One of the obstacles in the way of city reform is the incapacity of officials, resulting from the policy of paying inadequate salaries for positions of great responsibility. Men fit to deal with the great responsibility, the far-reaching policies, and immense financial affairs that come before city councils, must be adequately paid, else they cannot afford to serve. The niggardly economy which relies on getting aldermen to work for nothing, or for little, results in overwhelming losses, many of them concealed. To pay large salaries to a large number of aldermen or similar officials would, indeed, be expensive; but it is easy to choose between a large body of small men who work for a pittance and a small body of large men fairly paid. It is an imbecile policy to intrust these affairs to men who are mediocre or untrustworthy. Adequate salaries can be easily paid, even at less expense, if the number of the city council is reduced.

A small body of councilmen would be vastly more efficient than a large one. A board of directors of a great private business would be unworkable and preposterous if it were as large as an ordinary city council. It is equally preposterous for a city. The question is too plain

to need argument. Added to this is the certainty that many members elected by wards will represent their wards instead of the city, and make the city council a hotbed of local and petty politics.

The partisan division of a large part of the voters of a city, though this is becoming less, remains one of the important obstacles to good government. Such division prevents the enlightened and public-spirited citizens from uniting, and permits self-seeking politicians of both parties to unite for their mutual interests. But independent voting in local affairs has now so greatly increased that even unanimous nominees of the dominant party may be overwhelmingly defeated at the polls.

The most serious barrier of all against any effective reform in a city government is the control of nominations and, to a large extent, of elections, by the operation of a great political organization governed by a boss. The boss of the dominant party is usually entrenched in power in a way and to an extent that the ordinary citizen very dimly realizes. A boss who for many years has controlled the nominations of his party and has therefore been, with few exceptions, the godfather of every judge on the bench, of every city official, of every subordinate clerk or employee in every city department, including firemen and police, who has also been the dispenser of contracts for municipal supplies and jobs of work for the municipality, inevitably comes, in the course of time, to have a vast body of men bound to him by personal favors. Almost invariably this army of retainers is swelled by the entire mass of those saloon keepers, disorderly-house keepers, and all other classes of persons whose business is conducted in violation of law, and who know the value of the boss as a friend in time of trouble. Many support the boss from a sense of gratitude and loyalty for favors received. Nevertheless, the army at his command is an army of mercenaries. They stand by him for personal reasons; or, if they do so in the belief that it is best for the public, they do it under the bias of their personal relations to him. The great fact stands out that this army of the boss,

moving, not with banners and trumpets, or in uniform, but with no less precision and power, stands as a kind of *imperium in imperio* in every boss-governed city. In most elections the distinct character of this army is not very apparent, because its members are lost in the mass of other voters. But in the time of a rebellion against the boss, when unbiased voters almost unanimously march against him, and his host stands out by itself, it is a revelation to see the opposing array of men whose interests are bound to his. Only then does the public become aware that his so-called "organization" or "machine" is a trained, powerful, and (except in some extraordinary upheaval) invincible army of voters. Any thoughtful person may well inquire whether honest and businesslike government conducted for the public welfare alone can ever be secured so long as the boss can perpetuate such an army of mercenaries; that is, an army made up of those who, whether honest or dishonest, enlightened or otherwise, are bound to him primarily on the basis of personal interest because of favors received or expected.

The remedies for the serious evils in city government are now receiving extraordinary attention. Greater interest among citizens in public affairs, and a clearer perception that partisanship is not needed, but is pernicious in municipal business, are making it possible to secure better conditions. One aggressive movement aims, by direct primaries, to nominate men who represent the citizens, instead of the boss or political machine. Another aims at the simplification of elections by adopting a short ballot, so that a voter may easily inform himself respecting each of the candidates for office, and vote intelligently. Another, akin to it, is the adoption of a commission form of government, which gives to the city something similar to the board of directors of a private corporation. These three allied movements offer much promise.

The so-called commission form of city government originated in Galveston in 1900, after its destruction by a tidal wave. It was an emergency measure. A board or commission of five was adopted, like a board of directors, to manage the city's

affairs. That commission has achieved such extraordinary success in managing great public improvements for the rebuilding of the city, and doing it with exceptional economy, that the system seems to be impregably established. Nearly all other Texas cities of any size, taught by the example of Galveston, have adopted a similar government. Most of the cities of Kansas have followed the lead of Texas; and the same is true in Iowa, led by Des Moines. Government by small boards or commissions has also been adopted in St. Joseph, Missouri, Memphis, Tennessee, Tacoma, Washington, and many other cities in Colorado, California, North and South Dakota, Idaho, Oklahoma, and Massachusetts. The new government of Boston, Massachusetts, belongs to the same general class, and Buffalo, New York, has voted by a large majority in favor of a similar system. The success of this kind of government seems to be fully established by the experience of many cities, though the largest city in which it has yet been tried is Boston, and there it has just begun. Many advantages of this new plan are claimed, and some of them seem clear. 1st. It is certain that citizens can vote more intelligently in choosing five men out of ten who are named on a ticket, than in choosing a large number of officers of all grades out of the numerous names on the ordinary city ballot. 2d. A small body of men elected on a general city ticket will almost surely be the representatives of the city at large, and not of the wards in which they happen to reside. 3d. The city can afford to pay much higher salaries to each of five men who compose its responsible government, than to each of the large number that compose the usual city government. 4th. Adequate salaries will make it possible for men of ability and fitness for the office to serve the city when called upon. 5th. The domination of a political boss will be difficult when the city is governed by a board of directors, especially if the nominations are made by direct vote, and when, as in Des Moines, the ballot is nonpartisan, and no nominations by political parties are allowed. 6th. Putting each city department entirely

into the hands of one member of the board makes the responsibility for any mismanagement or graft unmistakable. Under our present city governments, it is often impossible to trace the real responsibility between various officials, each of whom blames the other.

One conspicuous fact about the commission or board form of city government is in the substitution of appointment for election, in the case of all subordinates and minor officials. Some will fear that this power of appointment given to five elected officials may be too great, and may be used for favoritism and the creation of a political machine in their own interest. But when the officials are not elected on a party ticket or under party nominations, but may belong to a variety of political parties or factions, the probability that they can combine, if so disposed, and unitedly build up a political machine, seems quite remote. The further fact is that each one, being responsible for his own department of the government, is under the limelight of public observation to an extent far greater than most city officials can be under the old system. He could hardly build up a very great machine in a single department, and there would be great risk of exposure in the attempt. It seems certain that, if political influence could be eliminated, and appointments to city positions made with the same intelligence and with the same single purpose to secure efficiency that are usual in a large private business, it would result in far greater efficiency and economy. People interested may find the story of the experience of the city of Des Moines in this new form of government told at length in McClure's Magazine for May.

The initiative, the referendum, and the recall have been incorporated in the charter of some of the cities that have adopted the new plan of government. By the recall, 25 or some other specified per cent of the voters can demand a special election to put any member of the board out of office during his term, though a limit is placed on the frequency with which such elections can be demanded. The initiative allows 10 or some other per cent of the voters to demand a popular

vote on measures which the board refuses to pass. The referendum allows such a per cent of the voters to call for a veto by popular vote of any measure which the board has passed. These are features which are to be judged separately, and do not necessarily constitute an integral part of the system of government by small board.

Theories and expectations are so often misleading that we may well be skeptical of promising but untried schemes. But when great evils grow up under one system, we are justified in at least trying something else which promises better results. Most people of sense are now ready to admit that cities should not be governed for the benefit of a political party, much less of a political boss, but should be governed in a businesslike way for the sole benefit of the community itself. One must be blind or brazen to contend that our cities have been governed in a businesslike way, or that their governing officials have as a class been fit for such responsibilities, either in character or business ability. Does anyone doubt that a small body of the best men of the city could manage its affairs with far greater economy and far better results than has heretofore been done? Those who distrust the new plan may doubt whether such men could in fact be chosen, or whether the plan would not result in giving still greater power to men unfit to use it. But there seems good reason to believe that, under this new system of a small board chosen without partisan nomination, elected on the general city ticket, with all interest centered in a few candidates, when adequate compensation makes it possible for able men to serve the city, we may greatly raise the grade of city officers. At any rate, the experience of from sixty to seventy cities since Galveston adopted government by commission in 1900 must be of the keenest interest to every citizen who desires greater honesty, economy, and efficiency in the government of our cities. If the experience of those cities does in fact demonstrate a great improvement in these particulars, a new epoch in municipal government has begun.

Art in Direct Examination

BY FRANCIS L. WELLMAN

Being a part of Chapter X from his remarkable book, entitled "Day in Court" or "The Subtle Arts of Great Advocates," copyright 1910, by the MacMillan Company, New York, and reprinted in CASE AND COMMENT by special permission of the author.



AS TO THE examination-in-chief of the advocate's own witnesses, of course it is impossible, within the limits of one chapter, to give a systematic and scientific exposition of the entire subject. We must assume, therefore, that the advocate has become entirely familiar with the rules of evidence before entering upon the trial, and I must content myself with indicating some of the arts employed by great advocates, and making a few suggestions which my experience has impressed upon me as important to be kept in mind when conducting the examination-in-chief.

Skill Requisite in Direct Examination.

The impression prevails quite generally in the profession that the direct examination of witnesses requires far less skill than the cross-examination.

I am inclined not to agree with this view, and it is a matter of regret that so little attention is paid to the examination-in-chief, while many arts are exercised to produce effects in cross-examination.

I presume this is owing largely to the fact that cross-examination is so much more engaging to the spectators, and its results are so much more quickly perceived by them.

The subtle arts and consummate skill of an examination-in-chief are seldom apparent to the mere spectator, however it may be appreciated by the lawyers engaged in the case, who may be able to recognize with what ingenuity and tact

the desired facts have been elicited, and the weak points suppressed or, at least, not clearly revealed.

Is it not far easier to propound cross-questions which will put a man in an unattractive position before an audience, than to so conduct his direct examination as to make him show himself to the greatest possible advantage?

Many an idle boy has broken painted windows, but no one but an Albert Durer could have made them.

Presenting Testimony in Winning Way.

If the direct examination is properly and skilfully conducted, the impression thus made by an honest witness is more lasting than any argument of counsel. The vivid story of a single witness told in a winning way will have a first impression upon a juror's mind that no eloquence can efface.

It is no easy matter for an advocate to get his own evidence properly before a court and jury.

It is an important fact for him to remember that cases are often won or lost by the straightforward statements of the parties themselves, and the natural homely way they sometimes have of putting things.

A builder was suing for extra work done on a dwelling. The defense was that everything had been paid for as originally contracted, but that much of the work had not been done according to agreement. An expert was called as defendant's witness. He testified that the house was 6 inches lower than called

for by the specification; that the windows were on weights instead of opening out like French windows on hinges, and that there were other material defects in workmanship. Item by item had to be carefully scrutinized. There was a chimney too short, a cornice defective, etc. The jurors were much worried and confused. Finally, defendant herself, an illiterate woman, took the witness stand in her own behalf. She knew nothing of books or architecture or plans, but "she was sure the plaintiff had made the house entirely contrary to his bargain, for he promised that the windows should reach clear to the floor. She remembered telling the plaintiff, Mr. Walker, so, and explaining to him that, if they had a death in the family and wanted to take a coffin out on the porch, French windows would open like a door, and let it out without cramping it in a narrow hall, and bruising the edges of the coffin all up." This graphic description settled the question with the jury, and the woman went away happy.

One more instance will suffice to fix this important fact in the mind, and these anecdotes will serve not only as illustrations, but give a little refreshment from the more tiresome rules and suggestions for the advocate's work.

A German had fitted up a fine barber shop with mahogany sideboards, gilded mirrors, etc., and a tenant just above him had let the water basin run over during the night, causing the plaster to drop and spatter all over the new furniture in the barber shop below.

When told about it the tenant made light of it, and when asked to make it good, he replied, "Oh, you go to hell." Therefore the barber brought suit in a justice's court before a jury. On the trial the barber was the only witness in his own behalf and stated to the jury with great candor what had been said by the tenant. When the lawyer prompted him by asking, "And what did you say?" he replied, "I said, 'I vill not go to hell, I vill go to law,'" and then rising to his feet he said, "und, shentlemen, dot vas schust so bad as to go to hell." He won a fine verdict by saying the right thing in the right way.

Brevity, Clearness, and Simplicity.

One of the first objects in the examination of witnesses, both on direct and cross, should be brevity. By his opening speech the advocate has clearly defined the issues between himself and his opponent. In his examination of the witnesses it should be his effort to adhere as closely as possible to these issues.

It is in this part of his work that the superior talent of the good trial lawyer in modern times is the most strikingly displayed. Cases take entirely too long to try, and the issues thereby get needlessly confused.

Modern trials should be conducted more as a matter of business,—the one object being to ascertain the truth of the matter in controversy and in the shortest time possible, and not to display the talents of the lawyers on one side or the other.

The advocate should select and arrange his evidence so that the development of his case will be interesting to his hearers. He should strive to keep the jury ever alert. He should remember that nowadays cases are practically won as they go along, and not by the arguments of counsel after the testimony is completed.

There is a great fascination for jurors in a well-planned trial that leads them to constant discovery of new facts as if they were developed almost unawares.

The jury should be made to feel that the advocate at least believes in his own case.

He should speak clearly and distinctly, mindful that he is engaged in a matter of importance, and let his art conceal art.

I am inclined to put clearness, simplicity, and brevity before everything else in the conduct of a case in court, including the examinations of witnesses and the attempt to keep the salient facts ever prominent before the jury.

An advocate should always use the simplest language possible. It is better understood both by his witnesses and his jury.

Necessity of Self-Possession.

He should preserve ever a calm, cool, deliberate, self-possessed, dignified demeanor. Calmness is shown by not growing petulant over little defects, in a kindly and courteous behavior toward witnesses, and in a quiet dignity which gives the idea of reserve force.

Any nervousness or petulance is immediately noticed by the jury, and is apt to embarrass and disquiet his witness as well.

He should convey to his witness the impression that he is strong enough to prevent him from stumbling or falling. This confidence is created by the manner and demeanor of the advocate, by the form in which he frames his questions, and the manner in which he asks them.

One mind communicates to another its feelings and emotions, and there is without doubt a well-defined wireless telegraphy going on all the time between a skilful examiner and his witness.

Overcoming Embarrassment of Witness.

The very first thing that should be done is to put his witness at ease. If he wants to realize the embarrassment of a witness as he mounts the witness stand, let an advocate step up there (in imagination) for a moment himself, sit down, and look into the "sea of upturned faces,"—the three or four hundred strange eyes, eager with curiosity, that are gazing into his own.

Few witnesses can fail to experience embarrassment, even trepidation, under such circumstances; and at the start it is extremely difficult for them to collect their thoughts and give their evidence in a natural way, and not become confused and contradict themselves.

What wonder that a witness, however truthful and intelligent, should take the oath as a witness with trepidation, akin to fear,—especially when he discovers the opposing counsel ready to cross-examine him as a hostile witness and turn his evidence to ridicule, if possible, or to his own discredit.

A man who has presided over many trials, Chief Justice Burke, having been summoned as a witness, said to one of his friends: "The character of a witness is new to me, Philips; I am familiar with

nothing here. The matter on which I came is most important; I need all my self-possession, and yet I protest to you I have only one idea, and that is, Lord Brougham cross-examining me."

Many may remember the almost historic reply of Henry Ward Beecher in the Tilden-Beecher Case, when William Fullerton, who was cross-examining him, shouted at him, "Why don't you answer my question?" "Because I am afraid of you," replied Beecher.

How can the advocate best overcome this embarrassment on the part of his witnesses?

Each witness should be properly introduced to the jury. It is during this introduction that the witness can be made to feel the gentle hand of the rein.

A few simple, unimportant questions should be put in a modulated, reassuring tone of voice. The witness sees that the advocate is at his ease and takes courage.

"You said your name was John Doe, I believe?"

"You live on 14th street, do you not?"

"What number, if you please?"

This is simple enough, and the witness, almost without any thought, replies, "No. 314."

Q. "How long have you lived in the one house?"

A. "Fifteen years."

Q. "And with your wife and children?"

A. "Yes."

Q. "You are in the manufacturing business, I believe?"

A. "Yes."

Q. "What position do you hold?"

A. "General manager."

Q. "How long have you been employed there?"

A. "Twenty years."

Q. "Then you must have started as an apprentice?"

A. "I did, at the workbench."

Q. "And were gradually promoted?"

A. "Yes; I became foreman of the shop and then superintendent of the factory."

The witness is at ease,—even rather proud of himself. The jury think well of him. The advocate can now safely proceed to the important work he has in hand.

Illustration of Unskilful Examination.

Contrast this style of examination with the less orderly system, which is so prevalent in our courts.

Examiner (in loud, harsh voice): "What is your name, Madam?"

Witness (timidly): "Mary Jones."

Lawyer: "Can't hear you; please speak louder."

Court interferes: "Madam, you must speak loud enough for that gentleman over there (pointing to the twelfth juror) to hear you."

(Witness looks at the twelve staring men and becomes even more embarrassed.)

Lawyer: "Where do you reside?"

(Witness doesn't "reside" anywhere that she knows of. So the court helps out with the suggestion, "Ask her where she lives.")

Witness (almost inaudibly): "14th street."

Lawyer: "Please speak up."

(Court officer now takes a hand and shouts in her ear, "Speak louder, Madam.")

Lawyer: "Do you live on the East side?"

Witness (embarrassed) nods her head.

Now, the stenographer can't hear her or see her nod, so he addresses her and asks her to please speak her answers, as he is writing and can't see her if she shakes her head.

This completes the confusion of the witness for she suddenly realizes that everything she says, and even every nod of her head, is being recorded by somebody.

Lawyer: "Are you acquainted with the plaintiff?"

(Witness hesitates and can't answer. She has never been in court before, and doesn't know plaintiff from defendant, even if she was "acquainted" with either one of them.)

Lawyer (with ray of intelligence): "Do you know your next-door neighbor, Mrs. Smith, who is sitting at the table by my side?"

This elicits a ready, "Yes, sir."

Then the counsel dives right at the heart of his case.

Q. "Do you remember the 5th of November, 1905?"

This completely upsets the witness. She cannot, in all probability, even remember the day of the month she is testifying in, much less the 5th of November, 1905, though she may remember all about the occurrences of that day.

If trying to get at the date of her birth, the lawyer might just as well ask her, "Do you remember the 5th of June, 1875?" (the day she was born), and yet this inquiry of a witness—whether she remembers a certain day—is one of the most common of the many errors committed almost daily in our courts.

By this time our lady witness, under such a style of examination, has become completely discredited with the jury by her apparent stupidity, and little credit will be given to anything she may afterwards say. And all through the fault of the lawyer conducting her examination.

Proper Method of Conducting Examination.

Imagine this same witness taken in hand by an experienced advocate, and again note the contrast.

This time the advocate takes his stand at the further end of the jury box. The witness, answering from such a distance, naturally raises her voice without having her attention distracted by a command to do so.

Q. "I believe you said your name was Mary Jones?"

A. "Yes sir."

Q. "And you live at No. 16 East 14th street?"

A. "Yes sir."

Q. "How long have you known this lady sitting by my side, Mrs. Smith, the plaintiff in the case?"

A. The answer comes readily enough, "Some ten years."

Q. "Do you remember some years ago being at her house when there was a conversation about an accident that had occurred the night before, in front of her house?"

A. "Yes."

Q. "I don't suppose you remember the date of that conversation, but can you remember about what year it was?"

A. The witness answers naturally: "About three years ago."

Q. "And in the fall of the year?"

A. "Yes."

Q. "Who was there besides yourself?"—and the witness will now, likely enough, go on and remember minutely the whole occurrence.

Such questions as these would now naturally follow:

"State to the jury what occurred?"

"State what next occurred?" "What was said, if anything?" "What was done?" "Go on and tell the jury in your own words what happened in your presence."

As soon as the witness gets thoroughly at ease and started, the fewer interruptions, the better. He should be permitted to tell his own story as far as possible, but the advocate should always register in his own mind the important facts, and see that they are all clearly brought out.

Thus, it can readily be seen how his thorough preparation for trial, and his intimate knowledge of his case and of his witnesses, which we have already discussed, will now come to his assistance.

The advocate should always be on the alert to restrain his own witness if he wanders from his subject, and not wait for him to be rebuked by the court, for this may entirely disconcert his witness. If, however, such rebuke comes, as it not infrequently does, a few simple commonplace questions will allow him to recover from his embarrassment, and continue with his story.

The advocate should avoid technical terms, as well as long, fine, or high-sounding words. These only confuse the witness and distract the attention of the jury from the story he is wresting from the witness.

The more neatly a question is put, the better, for it has to be understood not only by the witness, but by the jury as well.

Handling Different Types of Witnesses.

It will be necessary for the advocate to train himself to handle his own witnesses of various kinds, such as the stupid witness, the diffident witness, and, hardest of all, the overzealous one,—the witness who insists upon proving too much. Here is a type of man he is bound to hold in check. He should never let him tell his own story, for the witness will thereby usually prepare himself for slaughter at the hands of the cross-examiner. The effort should be to keep such a witness well to the point, and compel him to answer only such questions as are asked. An old lawyer's advice in regard to this kind of a witness is to "get rid of him as soon as possible."

Stupid Witnesses.

A stupid witness will require all an advocate's patience and good temper.

Some witnesses are not capable of a train of thought on any subject. They can observe no order of events whatsoever, and their ideas are confused even as to time. All that can be done with such witnesses is to direct them simply to answer the questions put to them, and then confine the questions to the isolated facts it is desired to show by them. A display of anger to such a witness only adds to his confusion. He should be encouraged by looks and expressions of approval. Questions should be framed to meet his difficulties. By observing his answers, and with a little ingenuity, an advocate can readily frame questions to fall in with his degree of intelligence.

Judge Jeffries once mistook one of these apparently stupid witnesses, and, having taken quite a dislike to the man (who had been testifying in his court, and who happened to have a very long beard), finally broke out with the remark that, if his conscience was as long as his beard, he must have a very vacillating one; to which the witness quickly replied: "My lord, if you measure consciences by beards, you have none at all."

TO BE COMPLETED IN JULY NUMBER

The Necessity of Uniform Legislation

The views of several legal authors and eminent jurists on this important subject are here presented. The two succeeding articles deal with phases of this question.—Editorial Note.

By
William
L.
Snyder

Uniform legislation is an ideal conception. It is the subjective point sought by all who have given any thought to the subject of law reform. . . . I believe that a degree of harmony may be attained. I am convinced also that this can be done without trenching to any considerable extent upon the domain of state legislation.

By
William
Schofield

Uniformity of law in the several states gains new importance when viewed as a means of upholding the state courts as against the Federal courts, and of preserving the just balance between the Federal government and the government of the states.

By
Hon. Everett
P.
Wheeler

Our imperfect system of law, unsuited to a commercial people, who buy and sell, make contracts and engage in business of all kinds, without regard to state boundary lines, can but fetter trade if the laws of the several states differ in fixing the liabilities of the contracting parties. . . . The demand is for unification of the law and this must be brought about by uniform enactments in the several states.

By
Leonard
A.
Jones

Conflicting laws tend to hinder interstate trade, to render contracts uncertain, and to occasion needless litigation. This diversity of law is a serious impediment to the prosperity of the country.

By
Hon. Alton
B.
Parker

We do not aim at absolute uniformity of law throughout the states, but a wise and conservative uniformity. There is danger in pressing uniformity to extreme lengths. There are diversities of climate, of production, of tradition, of heredity, of population, of pursuits, among the people of our several Commonwealths which should be generally respected.



Judge Gibbons' Proposed Amendment

A Plan to Promote Uniform Legislation

THE proposed amendment to the Constitution of the United States, drawn by Judge John Gibbons of the circuit court of Cook county, Illinois, and introduced in the House of Representatives by Congressman Martin B. Madden, directs investigation to a comparatively new field of research, and is sufficiently broad and practical to meet the most crying evils of the time.

Provisions of Proposed Amendment.

By the terms of the amendment Congress would be empowered, concurrent with the legislatures of the several states, to provide by law for the punishment of kidnapping, pandering, bigamy, polygamy, and conspiracy in restraint of trade; to provide respecting the liability of employers for injuries to employees, and for the adjustment by arbitration or otherwise of controversies and differences between capital and labor, and the regulation or prevention of child labor; to provide by law that the right of the people to the free exercise of religion shall not be denied or abridged by any state; to provide that no state shall place any person twice in jeopardy of life or limb for the same offense, nor compel a person in any criminal case to be a witness against himself, nor deprive any person of life, liberty, or property without due process of law, nor take nor damage private property for public use without just compensation; to make laws respecting the conservation and regulation of water power, forests, minerals, and other natural resources; also, respecting commercial paper, insurance income and inheritance taxes, marriage, divorce, and alimony, which laws shall be of a general nature, and uniform in operation throughout the United States; and that all state laws respecting such subjects

shall conform thereto. It is further proposed that the proceeds of the income and inheritance taxes shall be retained by the states, respectively, wherein they are collected, save in the event of war or other great emergency, when they shall be appropriated and added to the resources of the United States for such limited periods as Congress shall direct.

This plan offers effectual means of enabling the Federal government to supplement the states in suppressing crime and protecting citizens in the exercise of their absolute rights of life, liberty, and property. It is especially desirable as tending to assure certainty and uniformity in numberless cases where we have to-day among the states simply doubt, confusion, and bewilderment. It is to be greatly regretted, from this point of view, that the amendment has so little chance of being enacted into the fundamental law.

Control of Trusts.

Judge Gibbons has made an able and convincing statement in support of his amendment, from which we quote: "It is well-known that attempts are often made by the United States to destroy or curb the baneful influences of trusts, under what is known as the 'Sherman anti-trust act,' but the power of the United States under this act is necessarily circumscribed and limited, because the power to enact such a law is supposed to exist, if at all, under the interstate commerce clause of the Constitution. In fact, the power of the United States is so circumscribed and limited by the Federal Constitution that it is asserted by high authority that it has no power to control or conserve the water power, except for navigable purposes, or to protect or conserve the forests, minerals, and other resources of the Union, because they are state rights."

Protection of Immigrants.

"It appears from reliable statistics that in less than two years, over 2,161 innocent and defenseless immigrant girls have disappeared,—having been lured to their ruin by kidnappers or panders. It is not a national disgrace that the United States has no power to prosecute the offenders? The United States has power to guard a consignment of cattle or other commodity under the interstate commerce clause of the Constitution, but human beings, as such, are not commercial commodities (*New York v. Miln*, 11 Pet. 102, 9 L. ed. 648); after the passengers embark from the vessel and mingle with the people, if undesirable, diseased, or dependent, the United States may deport them, but in other respects the national government has no further control over them. *United States v. Coombs*, 12 Pet. 72, 9 L. ed. 1004; *Keller v. United States*, 213 U. S. 138, 53 L. ed. 737, 29 Sup. Ct. Rep. 470."

Conservation of Resources.

"Under the proposed amendment the Federal government would have ample power to deal with all subjects specified herein, and while it would not have power, except by purchase or condemnation, to assert ownership to the property in natural resources, such as water power, forests, minerals, and the like, not owned by the United States, it would have ample authority to conserve and protect them for the whole people by the making and enforcing of uniform laws applicable to every state of the Union, which cannot now be done."

Commercial Paper, Insurance, and Divorce.

"The law concerning commercial paper, insurance, and other matters, which, in the nature of things, cannot be confined to any particular state, should be the same in Maine and California, the Dakotas and Carolinas; and in view of the many divorce irregularities which have recently arisen in certain states, it

is time that the Congress of the United States, in the interest of good government and morality, and for the protection of the home and family, should have power to legislate on these subjects. The scandals incident to the procurement of fraudulent divorces in recent years have shocked the moral sense of the American people, trained by long generations of respect for law and liberty, religion and morality, and Congress should be empowered to prevent the further possibility of such scandals as far as it is possible to do so by legislation."

Income and Inheritance Taxes.

"I earnestly contend that income and inheritance taxes should belong to the state in which the possessor of the wealth from which it is derived has his residence, except in the event of war or other great emergency as declared by Congress, when these should be appropriated and added to the national resources for such limited periods as Congress may direct. It is evident that these taxes should be uniform throughout the United States, so that men of wealth will not seek to change their places of residence, in order to secure any more favorable taxation on these subjects, in one state than in another. . . ."

Labor Controversies.

"The states and Federal government should have ample power to curb or crush trusts, to prevent lockouts, and prohibit strikes. This can be done by wise and comprehensive laws applicable to all disputes, controversies, and differences which arise between labor and capital. The arrogant money barons and the opinionated labor bosses must be given to understand that this is a government of law and reason, which cannot be awed by the power of wealth or the force of numbers, and that the methods of feudal ages will not be tolerated therein; that both sides must submit their grievances to the arbitrament of impartial tribunals whose proceedings are controlled by just and equal laws."

Stare Decisis.

"Under the present Constitution, including its Amendments, there is no adequate power in Congress to legislate concerning any of the subjects specified in this proposed amendment. To the honor and glory of the Supreme Court of the United States, be it said that the doctrine of *stare decisis* is there observed and followed. When that court decides a constitutional question, even by a bare majority, its decision is fixed and stable until changed by legislation or constitutional amendment. By reason of this fact, if for no other cause, that court deserves and has gained the respect and admiration of the whole civilized world. . . ."

Interstate and International Problems.

"The states are no longer capable of grappling with and solving the great interstate transportation problems, and the many grave international questions, and those which have arisen as incidents thereto, which now confront us as a people. The states are and must remain indestructible forever, and so far as it concerns their fiscal and prudential affairs, and matters pertaining to health, morals, and police, the states must continue in the future as in the past, to exercise supreme power so long as that power does not conflict with the national Constitution."

"Our destiny as a nation is onward and upward, and it would be dangerous, impolitic, and unwise for the states to interfere in interstate matters or international affairs. Hence the apprehension of certain alarmists, to the effect that the nation is usurping the powers of the state, is without any real foundation, because the powers now assumed by the nation, hitherto supposed to be reserved to the states, are simply an outgrowth of conditions which have arisen from circumstances beyond the conception or contemplation of the Fathers of the Republic. Duties have been cast upon the nation arising from the exigencies of the times (as incidents of the Spanish War), which she neither can evade nor ignore. This does not mean usurpation of the rights enjoyed by the states. It simply means the logical development of national life, the progress of events, the trend of empire. Lofty statesmanship and fortuitous circumstances have placed us upon the crest of the flowing tide of expansion and national greatness. We must continue to strive onward and upward, or wait for the ebbing tide to drift backward and downward. We cannot remain stationary. The onward march of the nation leaves far behind the inactive and unprogressive. There is no place in the life of individual or nation not plainly to be classified as retrogression or progress."

The argument for greater legal unity lies in the national unity. Our people to-day in their business, contractual, and commercial relations are one people. They are one in a unity such as never before existed in this or any other great country.—Am. Bar Asso. Rep. 1891.

Uniform Divorce Legislation

BY HENRY C. SPURR

EVERY state in the United States, except South Carolina, has passed laws providing for the granting of absolute divorces, and Congress has authorized the granting of divorces in the District of Columbia and in all the territories and possessions of the United States except the Philippine islands and Guam. The causes or grounds for absolute divorce in the different states and territories of the United States vary from the one cause of adultery in New York and the District of Columbia to as many as sixteen grounds and causes, any one of which, proven, will entitle one to an absolute divorce in some of the other states of the Union, says Joseph Mitchell Donovan, the author of a text-book on "Marriage and Divorce."

Maladministration of Divorce Laws.

It is needless to say that, owing to the diversity of these statutes, and the facility with which decrees may be obtained in some jurisdictions, great abuses and scandals have sprung up in the administration of the divorce laws. Among the evils mentioned in a recent address by the Hon. Walter Bordwell, one of the judges of the superior court of Los Angeles county, California, are: Pretended service of process, with return regular on its face, but false in fact; perjury and subornation of perjury; collusion between husband and wife, both desiring a divorce, though no legitimate cause exists; bribery and intimidation by one desiring the decree from the other, to make no defense, in cases without legal merit; coercion by the offending spouse of the other to institute the action against her will; the commencement of another action after a denial of the decree on the

same grounds; and the hiring of someone to impersonate the defendant for the purpose of receiving service, and to deceive the officer making the return.

Uniform Legislation as Remedy.

Among the many remedies suggested for these evils and offenses, is uniform divorce legislation. This, in fact, seems to be the most popular cure mentioned for the scandals attending the administration of the divorce laws. Assuming that uniform legislation would do away with some of these abuses, as it undoubtedly would, it is nevertheless a serious question whether such a remedy is practicable or even wise.

Laying aside the religious view as to the indissolubility of the marriage tie, and considering marriage as a civil contract, as it is deemed to be in law, why is it that this contract cannot be set aside like ordinary contracts, if both parties agree, or if either party violates any of the terms of the agreement? It is, of course, because society has a vital interest in maintaining the integrity of the domestic relation; because the welfare of the state is believed to be founded upon the welfare of the family; and also because it is deemed to be to the interest of the state to see that parents, and not the state, support the children. To maintain the family and to prevent illegitimate children from becoming a burden upon the state has always been the great problem, and the religious views as well as the civil views as to the expediency of divorce are without question nothing more than the result of policies which have been developed in an earnest endeavor to solve this question in the best way. The varying laws of the states are but an expression of the policies of the peoples of those states on this question.

Divergent Laws Due to Conflicting Policies.

In South Carolina, for example, absolute divorces are not permitted. This is the result of a policy due to the belief that the family must be preserved at all hazards, although it may impose upon an innocent husband the duty of supporting children that may not be his, though born in wedlock. New York state does not believe it is wise to go as far as this. Sir George Lewis, an eminent lawyer, in speaking of the English divorce laws is quoted as saying: "I think that misconduct should be a ground for divorce for either party. If the husband commits misconduct the wife should be entitled to divorce, in the same way that the husband is entitled to divorce if the wife commits misconduct. I see no reason why there should be any difference between husband and wife before the law."

That there should be any question about this may strike the American reader as peculiar, but the reason for such a law probably is that the offense of the woman is considered greater, in that she not only violates the marriage vow, but in addition thereto is likely to impose upon her husband the burden of another's offspring; therefore, she is guilty of a double wrong while her husband can wrong her only in the violation of the marriage vow. Such a law may not be the result of a wise policy, but it is the result of a well-defined policy, not mere caprice, and it is a policy not wholly without reason or justice.

An illustration of the extreme solicitude of the state to avoid the care of illegitimate children is to be found in the merciless punishment that is visited upon unmarried women for sexual misconduct. So long, universal, and severe has been the condemnation of her wrong in this respect that it is well-known that it is extremely difficult for a woman who has once fallen to live down her shame, while the man is more readily forgiven and the offense more easily forgotten. By no hands has the punishment been more relentlessly inflicted than by those of her own sex. This is, of course, a

great injustice to the woman, but no such ancient and universal custom has arisen without good reason; and there is a reason for this custom, unjust as it may be. It cannot be explained on the theory of the inferior position that women once occupied in society. It owes its origin, probably, to the necessity of dealing vigorously with the evil of illegitimate children, and the punishment has been made most severe, by necessity, upon the one whose guilt is the more susceptible of certain proof.

The desire of the state to protect the family has led New York to make adultery the only cause for absolute divorce. Other states have said that, while the welfare of society depends upon the family, it must be a happy family, and therefore many other causes have been deemed sufficient for a decree. Last April a New York woman was granted a divorce in Nevada. After telling for an hour a story of inhuman treatment, the judge asked:

"Are the wives of New York men compelled to submit to such beatings and inhuman treatment from their husbands without any recourse to the divorce laws of that state?"

"Many of them do it," replied the plaintiff, "I had to come here for relief."

"Well," said the court, "you certainly can have a decree here, and it is so ordered."

No attempt will be made here to discuss the question whether a liberal or a stringent divorce law is the better policy. These illustrations are mentioned only to show that the divergent laws are the result of deep-seated policies adopted in dealing with a problem which has perplexed many peoples since the beginning of civilization. It would be easy enough to get uniform laws if there were a settled policy on this question, but it is doubtful whether many of the states would yield much to secure this end.

Practicability of Uniform Divorce Law.

Chief Justice Cullen of the New York court of appeals not long ago said that a uniform divorce law would be a bad law from the New York point of view.

Probably a uniform law would also be deemed a bad law from the Nevada point of view. Justice Cullen thinks that what is needed is not a uniform divorce law, but a uniform divorce procedure. He thinks the former impracticable, but the latter entirely feasible. He says that it is only necessary that each state shall prohibit the exercise of any jurisdiction by its courts to grant divorce except in cases where the marriage took place or the defendant was served within the state. But this is only aimed at fraudulent divorces. If a New York man, for example, desired in good faith to make his home in a western state where divorces are granted on the ground of desertion, and his wife refused to go with him, and he nevertheless took up his abode there, bought a farm and worked it, and intended to stay there, why should he not be granted a divorce upon service by publication, if it is the policy of the state to have him establish a family there? A large part of the evils resulting from the administration of the present laws is due to fraud and perjury, and this no legislation, uniform or otherwise, can prevent. The only way these evils can in any manner be mitigated is by a faithful and honest vigilant administration of the laws by the courts.

A Dramatic View.

A recent play entitled "A Man's a Man," presented by Henry B. Harris, is a dramatization of two famous divorce trials, and is designed to show the necessity of a national divorce law in order to prevent men of wealth from procuring easy divorces under the present laws, and in order to prohibit them from obtaining state legislation on the subject to suit

their convenience, and by means of which they might successively acquire and cast off as many wives as Henry VIII.; but since they cannot be made moral by legislation, it is quite likely that such men, if so disposed, would find a way to evade any uniform legislation that might be devised.

Under King Charles.

There was once a law in England, "That all women of whatever age, rank, profession, or degree, whether virgins, maids, or widows, that shall, from and after the passage of this act, impose upon or betray into matrimony any of His Majesty's male subjects by scents, paints, cosmetics, washes, artificial teeth, false hair, Spanish wool, iron stays, hoops, high-heeled shoes, or bolstered hips, shall incur the penalty of the laws now in force against witchcraft, sorcery, and such like misdemeanors, and the marriage, upon conviction, shall stand null and void."

It is not likely that this law ever entirely protected the guileless representatives of the so-called sterner sex from the tender snares of fair maidens,—and certainly not from the machinations of "widders," as the case of the elder Mr. Weller amply shows. It is too much to expect that the evils arising from the administration of the present divorce laws would entirely disappear upon the passage of a uniform national divorce law. Some of our states compare in size or population with foreign nations. Why should not these states work out this problem in a way deemed most beneficial to the welfare of their own people? Great as are the evils of fraud and perjury, they are not to be compared with the evils attendant upon illegitimacy.

To make a uniform law successful there must be uniformity in legislation, uniformity in amending the law, when it becomes necessary to amend it, and uniformity in the decisions under it.—Amasa N. Eaton.

Lord Halsbury, England's Grand Old Man

BY THE EDITOR



IN a speech at Lincoln's Inn, Hon. Joseph H. Choate thus addressed Lord Halsbury: "He is the very incarnation of perennial youth. Time, like an ever-rolling stream, bears all its sons away, but the lord

chancellor seems to stem the tide of time. Instead of retreating like the rest of us before its advancing waves, he is actually working his way up stream. He demonstrates what I have been trying to prove for the last three years, that the eighth

decade of life is far the best, and I am sure he will join with me in advising you to hurry up and get into it as soon as you can."

Since that time Lord Halsbury has laid down the seals of the chancellorship, but he is still at work, and his activities would put many a younger man to shame. But a few days ago he temporarily returned to the bench, as a matter of accommodation. Not content to round out his career by seventeen years of service in the highest position to which it is possible for one of His Majesty's lay subjects to attain, he has undertaken, since his retirement from office, the superintendence of a monumental digest of the laws of England. He still finds recreation in his favorite game of golf, and, in recent years of Parliamentary rout and disaster, he has valiantly upheld in the House of Lords the standard of stern, unbending Toryism.

Hardinge Stanley Giffard, when called to the bar in 1850, joined the South Wales circuit and prospered. It is related that once, in arguing a case on behalf of a Welshman, he showed a great knowledge of the principality and its people. "Come, come," said the judge at last, "you know you cannot make yourself out to be a Welshman." "Perhaps not," replied Halsbury, "but I have made a great deal of money out of Welshmen in my time." "Well, then," replied the judge, "suppose we call you a Welshman by extraction."

He was also a regular attendant at the central criminal court (The Old Bailey Bar), the best school in the world at which to learn the art of cross-examination and re-examination. After graduating as the prisoner's friend, he worked his way up to the position of one of the standing counsel for the Treasury. In 1865 he attained the rank of Queen's counsel. In 1871 he was the undisputed leader of his circuit.

Mr. Giffard took a prominent part in the noted ejectment action of *Tichborne v. Lushington*, in which he was of counsel for the claimant. During the trial Sir John Coleridge, attorney general, after reading a letter which constituted a piece of damaging evidence against

the claimant, called upon counsel for the latter to throw up their briefs, under penalty of being involved in the guilt of their client, and enforced the appeal by insisting that he spoke "however unworthily" as head of the English bar. To this statement Giffard, who was not in court when it was made, took early occasion to indignantly reply: "I find this is attributed to the attorney general, as having been made applicable to counsel in this case: 'Lawyers who, after the demonstration of the iniquity and injustice and groundlessness and fraud of a claim (if it be demonstrated to their minds), lend themselves for one moment to the prosecution of it, make themselves accomplices in the guilt of the person whom they represent.' As an abstract proposition it is perfectly unobjectionable; as applicable to the facts of this case it would probably convey to the minds of everybody who read it an insinuation against the members of the bar who are against him on this occasion. I can only say that the attorney general has referred to his character as attorney general. In this court he is simply the counsel representing one of the parties, and he has no greater authority than any of the most junior members of the bar present. I utterly refuse to have my conduct dictated, or insinuations made against me, by the attorney general, or any other member of the bar. If that is not meant I have no more to say. I think nine out of ten people would have supposed that the attorney general meant to say my learned friends and myself were concerned in what we considered a fraudulent case. I will not characterize that assertion, but your lordship will well understand how I would characterize it."

"The strength of Giffard's advocacy," says Mr. Atlay in *The Victorian Chancellors*, "lay emphatically in the man himself; he owed little to external advantage, to physical presence, or voice. But there was a virile force, a combativeness, a strength of conviction, and a pertinacity which carried all before him; he was absolute master of his trade, and he possessed an innate genius for law. He had one of those happily constituted intellects which, across labyrinths of sophistry and

through masses of immaterial facts, go straight to the true point. He had an intuitive instinct for the essentials of a case, and a corresponding dislike for the verbiage in which they are too frequently enveloped." It is told of him that he received a special retainer one morning in London, on behalf of a prisoner charged with some very complicated fraud, whose trial was fixed for that very day at Winchester. He had just time to catch the train, and, with the verbal information gleaned from the solicitor, he put up an admirable defense. "Facts without comment" were what he demanded in his instructions, and he has been heard to advise young barristers not to be the slaves of their brief. "Too much reading and not enough thinking," he added.

On a certain occasion when he was retained in an election petition, it was discovered by his juniors the evening before the commission opened that he had neglected to read his brief. The party were staying in a big country house, and after dinner he was conducted to the billiard room in company with the brief, and the key turned upon him. Three hours later the party returned, and found him peacefully asleep on the settee, with the bulky brief as his pillow.

In 1875 he accepted the post of Solicitor General, and held the position for over four years, making an excellent law officer. He is described as thoroughgoing in the discharge of his duties, and invariably courteous alike to those associated with him and to those opposed to him. He was endowed by nature with a kindly disposition and imbued with a high sense not only of his own responsibilities, but of the traditions and prerogatives of the English bar. When on the bench he did not approve of the unnecessary interruption of counsel. "If judges," he once said, "would only appreciate what an invaluable assistance it is to their minds to listen to those who have prepared their arguments, and are perfectly familiar with the facts, they would recognize that initial listening, at all events, is most desirable." Lord Halsbury is not alone in perceiving how disadvantageous the interruption of counsel may be. "A garrulous judge," Lord Al-

verstone took occasion to observe not long ago, "is an intolerable nuisance, because he lengthens the proceedings and diverts attention from the points in the mind of the advocate."

In 1877 he was returned to Parliament for the Cornish borough of Lannceston. A contemporary has said of him: "Lord Halsbury is a Tory to the finger tips; he is one of those fortunate spirits to whom, in the sphere of politics and religion, doubt is unknown and unthinkable; with due allowance for changed conditions, he is the lineal descendant of Lord Eldon."

Sir Harding received the seals on June 24th, 1885. He took his title from the manor of Halsbury in Devon, which had been the home of the Giffard family in bygone generations. He quitted the bar in the heyday of his fame. He was perhaps, says Mr. Atlay, "the most successful advocate of his day in that class of cases where the appeal is to the sentiment, the emotions, or the prejudices of the jury; an admirable speaker and a fine cross-examiner, his pugnacious and combative spirit was kept in strict subordination to the needs of the hour, while it used to be said of him that he was the only man at the bar who would stand up to Mr. Charles Russell with absolute and unmistakable confidence."

"On the woolsack he astonished counsel and public alike by his grasp of principles and intimate knowledge of reported cases. The great variety of his practice had brought him into contact with almost every conceivable branch of law. It may be doubted whether he has ever been excelled in quickness of apprehension or in the power of accurate recollection. He has always acted on the maxim that you must settle what are the real facts of the case before you begin to apply your law. For shrewd common sense and terse vigorous language, his decisions need not fear comparison with those of the ablest of his predecessors."

It is to be hoped that Lord Halsbury may be permitted to complete the great legal work on which he is now engaged, and long to enjoy the honors which he has so deservedly won.



The Editor's Comments

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Edited by Asa W. Russell

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Honor Among Lawyers

"System, the Magazine of Business," has declared professional men to be poor credit "risks" who, too often, never pay at all. It cites the case of "a well-known

lawyer who went to a tailor and ordered a suit. He was well dressed, distinguished in appearance, courtly in manner, and bore a high reputation in his profession. The tailor was flattered at the order, and cheerfully charged the \$50 for the suit. Later he charged another suit and an overcoat. Then came a surprise. He couldn't collect. His banker told him why.

"Professional men as a rule," he said, 'have no money invested in goods. Their business investments consist of their ability. You can't attach it. You can't tie it up. The fact that this lawyer owes you money, and everybody else in town, doesn't hurt him much. He is a brilliant man, and if you have a case to prosecute or defend, I would advise you to employ him. We do.

"If you tried to collect your bill of him in court, he would probably beat you. He would prove your clothing was no good as to wear. He'd proclaim it not all wool, and make you get experts to prove it was. He would put \$5,000 worth of trained ability against your \$10 lawyer.

"Yes, you had better charge your account to profit and loss, though if you ever get a case you can get him to look after it for you, and then credit him with his fee. That is the way a lot of people square their accounts with him."

The folly of drawing broad generalizations from individual cases is well illustrated in this instance. Unjust reflections are cast upon a profession because of the delinquencies of one of its members, when, as a matter of fact, no body of men in the country have a higher sense

of honor in money transactions than the lawyers. This is amply shown by the experience of the Bancroft-Whitney Company, law publishers, who lost not only all their stock and plates in the San Francisco fire, but all their books of account, and were left without any evidence of what was owing them. They knew that, exclusive of accounts considered doubtful, there was due them by customers other than those in San Francisco, \$175,000. Their only means of ascertaining the particulars was through those who owed it. They decided to make it wholly a matter of honor, and sent to 35,000 lawyers a printed circular requesting a statement of what each owed, whether due or not. Returns of money and of acknowledgment were prompt and encouraging. Some of those considered doubtful were the first to acknowledge their indebtedness. Before long they were able to reproduce their books, and the acknowledged balances nearly equaled their estimated total of good accounts. Remittances are still being made. Up to date over \$170,000 have been paid or acknowledged. Of this amount about \$25,000 cover accounts not included in their estimate of collectable indebtedness. This brings their estimated total to \$200,000, and established the fact that over 85 per cent of all that was owed them was acknowledged promptly under this call on honor. This is a record of which the legal profession may well be proud.

Right of Insurance Company to Maintain Hospital

IN *People ex rel. Metropolitan L. Ins. Co. v. Hotchkiss*, 120 N. Y. Supp. 649, the New York appellate division, third department, determined that the company's plan to purchase real estate to be used as a hospital for the care and treatment of its employees who are afflicted with tuberculosis does not violate that provision of the law which prohibits insurance companies from acquiring real estate for any purpose other than that of the transaction of their own business. The opinion accompanying the decision

starts out with declaring that "the humane and praiseworthy purpose" for which the acquisition of the real estate is desired furnishes no justification for stretching the law; but it finds the reconciliation of the scheme with the law in the fact that, under present-day conceptions of the relations between employer and employed, provisions "for the comfort, health, safety, and well-being of the employee," are regarded as a normal part of the dealings of the employer with him in a strictly business relation. And such provisions, which are made by individual employers not only on grounds of humanity, but as part of the inducement for desirable persons to remain in their service, may equally be instituted by corporations.

The court passes lightly over the question of the possibility of the hospital being used, in case vacancies exist in it, for the accommodation of selected cases from among the policy holders. This possibility, it seems, had been indicated in the original petition, but "the briefs of counsel upon either side," says the court, "have practically eliminated that question." From merely a financial standpoint many have regarded this proposition as wise. The business of the insurance company is, of course, superficially considered, not purely humanitarian; but it is good insurance business to prolong the life of the policy holder. Large numbers of these policy holders, it is said by the company's officials, succumb to tuberculosis each year, contracted presumably after their policies had been issued. It is not desirable that policy holders should pass away after paying comparatively few premiums.

There is also a humanitarian factor which should not be omitted from the equation. It has now been clearly demonstrated that tuberculosis, in its initial stages, is no longer classified as an incurable disease. Timely scientific treatment, under conditions which can be supplied by a sanitarium like the one proposed by the Metropolitan Life Insurance Company, affords a fighting chance of eradicating the seeds of the malady. Every such institution, wisely conducted, is a blessing to humanity.

Deeper Study of the Law

A graduate school in jurisprudence, says the Richmond Virginia Dispatch, is part of the new plan of extended graduate work announced by the Johns Hopkins University. When the proposed removal to its new site takes place and when the additional \$2,000,000 endowment fund for the university is procured, the Hopkins proposes to take young men where the law schools leave them, and give them original work in jurisprudence. They will have the opportunity of studying not only the law as it is, but the law as it ought to be, and will be encouraged to advance into a study of the philosophy of the law.

As legal education stands to-day, it is entirely vocational or professional. The student is given books on pleading, books on evidence, books on torts, books on half a score of particular technical branches of the law, and is required, in the course of two or three years at the most, to master a world of the detail required in the daily practice of his profession. He has little opportunity for the philosophical side of his subject, and little chance to master the great underlying principles of jurisprudence, which mold the statute law.

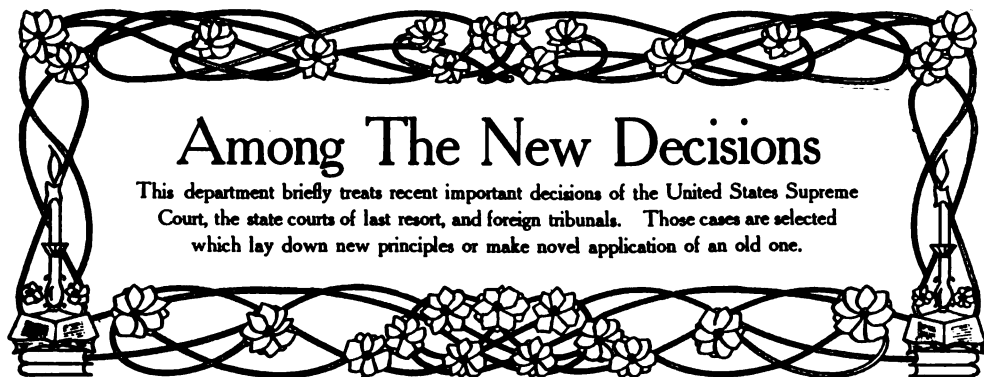
When students are given opportunity to study what is now denied to them by the very mass of their subject, it can safely be predicted that a new era in American jurisprudence will begin. The history of the law is the history of great epochs of study, and the biography of the great lawyers is a story of new investigations. Blackstone was great not because he mastered the letter of the law, but because he fathomed the spirit of the law, and his name has become classic not because he knew so well what the law was, but because he knew so well why the law was. In the same way, Austin stands out as one of the great figures of legal history solely and only because he looked away from the letter of the law to the spirit that made the law.

It is often alleged against American lawyers that they keep too close to their text-books and work too much by rote. The case may be no worse with them than with the lawyers of England, for example, but the demand for jurists who know more than the statutes is daily growing. If Johns Hopkins can meet this demand, it will have added another to the great services it has performed for the nation.

Lawmaking Gone to Seed

THERE have been more than 22,000 bills, says the St. Paul Pioneer Press, introduced in the present Congress. It is, of course, impossible that all, or even a large proportion of them, can receive careful consideration from the members of Congress. To be sure, most of them are bills of a local nature that concern only an insignificant proportion of the people. Those bills are referred to the committees for consideration, and do not take up the time of the House or Senate. But they require a great deal of time and attention from the members as committeemen,—time and attention that should be devoted to the consideration of matters of legislation on subjects of general importance. The result is delay and dissatisfaction.

The first Congress had before it 300 bills. No doubt each one of the 300 was carefully considered, and nearly all were of national importance. It would be well if the Congresses of present times could approximate the showing made in the beginning of the Republic. It is not possible, of course, to measure present accomplishment by the conditions of a century and a third ago. But there is no doubt that we have been drifting into bad ways in matters of legislation. There are too many bills and too much lawmaking in Congress, legislatures, and city councils. We should cut down on quantity, and add to quality.



Among The New Decisions

This department briefly treats recent important decisions of the United States Supreme Court, the state courts of last resort, and foreign tribunals. Those cases are selected which lay down new principles or make novel application of an old one.

Scienter of vicious propensities of dog. The authorities are almost

unanimous in holding that the owner of a dog cannot be held responsible at common law for injuries resulting from the vicious or mischievous acts of the animal, unless it is established that he had knowledge, either actual or constructive, of its vicious or mischievous propensities. The application of this general rule has given rise to many cases in which it is sought to define what actual or constructive knowledge concerning the dog the owner must have, in order that he may be charged with *scienter* of its vicious propensities. These cases are discussed in an extensive note in 24 L.R.A.(N.S.) 458, accompanying the recent New Jersey case of *Emons v. Stevane*, 73 Atl. 544, holding that, in an action for injuries committed by a dog, it is not necessary that the same injury should have actually been committed by the animal to the knowledge of its owner, but knowledge by the owner that the disposition of the animal is such that it is likely to commit a similar injury to that complained of is sufficient to maintain the action.

Attachment of cars of foreign railway company. The decision of the Supreme Court

of the United States in *Davis v. Cleveland, C. C. & St. L. R. Co.*, Adv. S. U. S. 1909, p. 463, that the attachment or garnishment of cars owned by a foreign railway company, which have temporarily come into the state in the course of interstate transportation, through the agency of other carriers, is not an unlawful

interference with the instrumentalities of interstate commerce, virtually settles a question upon which there has been a diversity of opinion in the courts. The contrary view has hitherto received the most support, as is shown by the notes to *Wall v. Norfolk & W. R. Co.* 64 L.R.A. 501, and *Seibels v. Northern C. R. Co.* 16 L.R.A.(N.S.) 1026.

Binding effect of conditions announced by auctioneer. A somewhat unusual question is presented in the

recent Iowa case of *Kennell v. Boyer*, 122 N. W. 941, holding that conditions of sale announced by an auctioneer supersede those incorporated in circulars distributed among prospective bidders at an auction sale, and bind a purchaser, although they were not brought to his attention. The prior decisions on the subject, which are reviewed in a note to this case in 24 L.R.A.(N.S.) 488, support the conclusion that conditions of sale announced by an auctioneer supersede those contained in the advertisements of the sale, but there is a strong conflict of opinion as to whether the terms announced by an auctioneer would be binding upon a bidder unless brought to his notice.

Delegation of authority to create office. The power of a legislature to delegate to the

governor of the state authority to create the office of special attorney for the state to prosecute infringements of the liquor laws is denied in the Maine case of *State ex rel. Young v. Butler*, 73 Atl. 560, 24 L.R.A.(N.S.) 744, which seems to be a case of first impression.

Recovery upon substantial performance of building contract. The doctrine that the substantial performance of

a building contract will support a recovery by the builder is firmly established in the United States. The case law on the subject is discussed in an extensive and exhaustive subject note in 24 L.R.A. (N.S.) 327, which accompanies the recent Wisconsin case of Foeller v. Heintz, 137 Wis. 169, 118 N. W. 543, holding that to constitute substantial execution of a building contract, or one to supervise and direct the construction of a building according to specific plans, and with the usual architect's duty in such cases, the structure as completed must be the result of good-faith efforts to perform strictly, and must satisfy with exactness all essentials to the accomplishment of the proprietor's purpose. Substantial performance, however, is consistent with imperfections in matters of detail, some of which are practically structurally remediable and others not, provided they do not defeat the object of the proprietor, although the expenditure of a considerable sum of money will be required to afford him in substance the thing agreed upon.

Removal of building as unlawful erection within fire limits. The authorities on the question of the removal of a wooden building within fire limits, as a violation of a prohibition against the erection of such a building, are collected in a note in 24 L.R.A. (N.S.) 456, accompanying the recent Minnesota case of Red Lake Falls Mill. Co. v. Thief River Falls, 122 N. W. 872, holding that the removal of an already constructed wooden building from a point outside, to a location within, the fire limits of a city, is within the prohibition of an ordinance establishing fire limits, and declaring it unlawful for any person "to erect or attempt to erect within the above-described fire limits any wooden building." There are several cases which go even further than the one under consideration, and hold that a prohibition against the erection of a wooden building

within established fire limits operates to prevent the removal of a building from one part of the fire district to another.

Right of carrier to refuse ministerial rates. The question of the right of a carrier of passengers to refuse to sell a ticket at a reduced rate of fare, to a member of a class to whom it has customarily made such concessions, seems to have been passed upon by the courts for the first time in the recent Mississippi case of Illinois C. R. Co. v. Dunnigan, 50 So. 443, 24 L.R.A. (N.S.) 503, holding that a minister of the Gospel whom a carrier refuses to transport for the customary reduced fare charged members of his profession has no right of action against the carrier because of the discrimination.

Duty of carrier to maintain waiting room at junction point. The duty of a carrier to keep its waiting room, at a junction point with other roads, open for the accommodation of persons changing trains, is asserted in the recent Georgia case of Riley v. Wrightsville & T. R. Co., 65 S. E. 890, 24 L.R.A. (N.S.) 379, which is apparently the first case in which the question has been considered.

Power of state to compel railway company to maintain telegraph operator at station. An interesting question which seems never before to have been presented to the courts is passed upon in the recent Oklahoma case of Chicago R. I. & P. R. Co. v. State, 103 Pac. 617, 24 L.R.A. (N.S.) 393, holding that a railway company cannot be reasonably and justly required to install and maintain a telegraph operator at a station at which the receipts from the commercial telegraph service are inadequate for the maintenance of an operator, unless the installation of an operator is reasonably necessary to provide for the safety and expedition of the train services, both freight and passenger, or either; or a necessary convenience which ought to be afforded to the public by the railway company in the conduct of its freight and passenger service, or either.

Service of process on nonresident corporate officer. A novel question as to the right to serve process in an action against

a domestic corporation, upon a nonresident officer who is within the state as a party or witness, is passed upon in the South Carolina case of Breon v. Miller Lumber Co. 65 S. E. 214, 24 L.R.A. (N.S.) 276, in which it is held that a domestic corporation cannot defeat a service of process upon it because it was made upon its nonresident president while he was temporarily in the state for the purpose of attending, as a party and a witness, a reference in another suit. While no other case seems to have considered this exact question, the decisions upon the right to serve process upon a nonresident corporate officer who comes within the state as a witness or party to a pending suit are reviewed in a note to the case.

Usurious loan office as a disorderly house. The unusual question whether a place where loans with usurious interest are habitually made is a disorderly house, rendering its keeper liable to indictment, has been presented to the courts of New Jersey in the case of State v. Martin, 73 Atl. 548, 24 L.R.A. (N.S.) 507, and decided in the affirmative, in conformity with the prior ruling of the court upon this point in State v. Diamant, 73 N. J. L. 131, 62 Atl. 286.

Laying pipe through land as taking for public use. It seems evident that any direct encroachment on land which subjects it to a public use that excludes or restricts the dominion and control of the owner over it is a taking of his property for a public use, within the meaning of a constitutional provision guarantying to the owner a right of compensation. In accordance with this principle, it is held in the recent West Virginia case of Lovett v. West Virginia Central Gas Co. 65 W. Va. 739, 65 S. E. 196, 24 L.R.A. (N.S.) 230, that the laying of pipe lines by a gas company in the soil of lands without the consent of

the landowner, or appropriation in the manner provided by law, is a taking of the lands within the intent of such a constitutional provision. This decision is in conformity with the adjudged cases on the question, as disclosed by the note appended to the L.R.A. report of the case.

Equitable aid of The familiar maxim conspiracy. That equity will not aid an unlawful transaction or conspiracy is applied in the recent Iowa case of Funck v. Farmer's Elevator Co. 121 N. W. 53, 24 L.R.A. (N.S.) 108, refusing to compel a corporation to transfer on its books stock to the name of one who, in the interest of a conspiracy against the business of the corporation, seeks information regarding its business, which his position as stockholder will give him. The authority of the maxim invoked in this case has never been weakened by exceptions ingrafted upon it by the courts, the only question being whether the case presented came fairly within its scope. The only similar case seems to be that of Gould v. Head, 41 Fed. 240, where the maxim was held a bar to equitable relief sought under like circumstances.

Admissibility of state-ments of present pain made subsequent to injury. There has been considerable conflict of opinion upon this question. In some states involuntary expressions of pain are admitted while mere complaints or statements are not. In others a distinction is recognized between declarations made to physicians and those made to laymen. In most jurisdictions, however, the evidence is received for what it is worth, the weight to be accorded it being left to the jury. The question is presented in the recent Mississippi case of Missouri Central R. Co. v. Turnage, 49 So. 840, holding that a nonexpert may testify as to the expressions of present pain and suffering by one injured by another's negligence, although made sometime after the injury. The authorities on the subject are reviewed in an elaborate note accompanying the report of the case in 24 L.R.A. (N.S.) 253.

Parol evidence as to consideration expressed in deed.

That the true consideration of a deed may be shown by parol where the purpose is not to invalidate the deed is a generally accepted rule, and this includes the right of the grantor to show that, although the deed acknowledges the receipt of the consideration, it has not in fact been paid. The additional question whether, the grantor having shown that the expressed consideration had not in fact been paid, the grantee or his privies may show on his behalf that it was not intended that the consideration should be paid, or that the consideration had been paid in some other way than that expressed in the deed, is presented by the case of *Koogle v. Cline*, 110 Md. 587, 73 Atl. 672, holding that, in a suit by the administrators of one who had granted property to his heirs for a consideration which the deed recited to have been paid, to enforce payment of the consideration on the allegation that it was not in fact paid, parol evidence is admissible to show that the recital was inserted merely to show that there was no intention on the part of the grantor that it should be paid. The decisions upon the admissibility of parol evidence to show the true nature of the transaction, where the recited consideration of a deed is shown not to have been paid, are reviewed in the note which accompanies the report of the case in 24 L.R.A.(N.S.) 413.

Liability of charitable institution for false imprisonment.

A case which seems to have no exact precedent is that of *Gallon v. House of Good Shepherd* (Mich.) 122 N. W. 631, 24 L.R.A.(N.S.) 286, holding that a public charitable institution organized for reformatory purposes is liable in damages to one whom it imprisons in its institution without lawful authority, and it cannot escape liability on the theory that it is not liable for the acts of its servants, nor because it believed that the imprisonment was for the best interests of the person confined.

Power of board of health to direct manner of abating nuisance.

While a board of health has power to direct the abatement of conditions which endanger the health of the community, it is undoubtedly the general rule, as shown by a review of the authorities in a note in 24 L.R.A.(N.S.) 241, that the method to be adopted in accomplishing this end is for the property owner to select. The note is accompanied by the recent case of *Durgin v. Minot*, 203 Mass. 26, 89 N. E. 144, which denies the right of a board of health to require the surface of a private passageway which is in an unsanitary condition to be paved, or otherwise provided with a roadbed, at the expense of its owners, in a manner and with materials satisfactory to the board.

Mandatory extinguishment of burning mine.

A question which appears to be one of first impression was presented for adjudication in the recent case of *McCabe v. Watt*, 224 Pa. 253, 73 Atl. 453, 24 L.R.A.(N.S.) 274, holding that a corporate lessee of a coal mine within the limits of a municipal corporation will not be compelled by mandatory injunction to extinguish a fire in the mine, which has become a nuisance to the health and property of adjacent property owners, where it has exhausted its entire capital in an unavailing effort to suppress the fire, and the work would require the expenditure of a large sum of money and the labor of a large number of men for a long period of time.

Correspondence school as instrumentality of interstate commerce.

A question of unusual interest was presented in the recent case of *International Text-Book Co. v. Pigg*, U. S. Adv. p. 481, decided by the Supreme Court of the United States on April 4th, 1910, which holds that commerce is conducted among the states, within the meaning of the Federal Constitution, by a corporation engaged in imparting instruction by correspondence, whose business involves the solicitation of students in other states by local agents, who collect and forward the tuition fees

to the home office, and where systematic intercourse is carried on between the corporation and its scholars and agents, wherever situated, by the transportation of the necessary books, apparatus, and papers. The importance of the decision lies in the fact that it makes the operations of these comparatively novel and useful educational institutions subject to regulation by the national government through Congress, and absolves them from any interference by the states except in reference to transactions wholly within the state where the school is situated. It would seem that the case could not well have been decided otherwise in view of the earlier adjudications holding that telegraph lines transmitting electric telegraph messages from a point in one state to a point in another were engaged in interstate commerce, since no valid distinction can be drawn between communications transmitted by means of electric signals and text-books, letters of instruction, and apparatus forwarded through the mails from one state to another, by the teachers of the correspondence schools.

Duty of water supply company to filter water.

The power of a municipal corporation to compel a water supply company, in the absence of some contract requirement, to filter water, seems to have been considered for the first time in the recent Kentucky case of *Georgetown v. Georgetown Water G. E. & P. Co.* 121 S. W. 428, which holds that a corporation undertaking to furnish to a municipality a supply of water for domestic use and fire protection, from a source furnished by the municipality, cannot be compelled to filter the water when it becomes impure without the fault of the company. The ground of the decision is that to impose this duty upon the water company would be in effect to make a new contract between the parties. The case is accompanied by a note in 24 L.R.A.(N.S.) 303, in which the few cases in which the courts have enforced a contract requirement to filter water are considered.

Mandamus to enforce right of stockholder of water company to water.

That a stockholder in an irrigation company organized to procure a supply of water for distribution among its stockholders, for use upon lands owned by them, may compel, by writ of mandamus, the delivery to him of the water to which he is entitled, and that such right cannot be denied on the theory that it is sought merely to enforce a contract right, is held in the recent California case of *Miller v. Imperial Water Company*, 103 Pac. 227, 24 L.R.A.(N.S.) 372. The relief sought was granted in this case on the ground that it is one of the well-recognized offices of the remedy by mandamus, to enforce the plain rights of stockholders or members of corporations in the absence of any other adequate remedy.

Right of city to make profit from water or lighting plant.

An unusual question is presented by the recent Washington case of *Twitchell v. Spokane*, 104 Pac. 150, 24 L.R.A.(N.S.) 290, holding that a city authorized to control the price for which water will be supplied from its plant may charge such rates as will yield a reasonable profit. The few preceding cases upon the subject are reviewed in a note accompanying the L.R.A. report of the case, and with a single exception uphold the right of a city operating a water or lighting plant to realize a profit over and above its operating expenses.

Liability of officer using criminal process to collect debt.

The liability of an officer who wrongfully and unlawfully uses criminal process which was legally and properly issued, for a purpose it was not intended by law to effect, is considered in a note in 24 L.R.A.(N.S.) 301, which accompanies the recent Kansas case of *McClenny v. Inverarity*, 103 Pac. 82, which holds that, while valid process will protect an officer using it for a legitimate purpose in executing its mandate, yet it is not a protection for the extortion of money or other abuses. This decision is in harmony with the earlier authorities.

Perjury as ground for civil action. The recent North Carolina case of *Godette v. Gaskill*, 65 S. E. 612, holding that one against whom judgment is entered by reason of perjury cannot maintain an action for damages against the perjurer, is undoubtedly in conformity with the decisions rendered on the subject in numerous jurisdictions. Indeed, but a single case holds to the contrary, as appears by a note in 24 L.R.A.(N.S.) 265, in which the decisions are reviewed. The prevailing view is based upon the ground that such an action would amount virtually to a new trial of the former suit.

Exclusion of colored pupil. The question of the right of a private educational institution lawfully to exclude colored pupils is presented in the case of *Booker v. Grand Rapids Medical College*, 156 Mich. 95, 120 N. W. 589, 24 L.R.A.(N.S.) 447, holding that a negro is denied no constitutional right by being excluded from a private incorporated institution of learning. There seems to have been but one prior adjudication on the subject, and this is in harmony with the later decisions.

Liability of street railway company removing barrier erected by stranger. The duty of a street railway company with reference to barriers or lights

placed by a stranger over an excavation made by him under or near the track is passed upon for the first time in the case of *Dix v. Old Colony Street R. Co.* 202 Mass. 518, 89 N. E. 109, 24 L.R.A.(N.S.) 567, holding that a street car company, although not bound to remove and replace a barrier which guards an excavation made by a stranger across its tracks, is liable, in case it assumes to remove the barrier and neglects to replace it, to a traveler on the highway who is injured after dark by falling into the excavation, because of the absence of the barrier.

Reunion of Presbyterian and Cumberland Churches. The recent decision in the Indiana supreme court in *Ramsey v.*

Hicks, 91 N. E. 344, — L.R.A.(N.S.) —, assuming that it is not overruled on rehearing, aligns Indiana with California, Georgia, Kentucky, and Texas, in support of the validity of the union or reunion of the Cumberland church with the Presbyterian church, U. S. A., as affecting the property rights of local churches formerly in subordination to the Cumberland body, thus reversing the position taken by the appellate court in the same case (87 N. E. 1091, 89 N. E. 597). While this particular attempt to promote church unity has presented some serious legal questions for solution by the civil courts, in actions involving property rights dependent thereon, the majority of the courts that have thus far passed upon the question have found no insuperable difficulty in giving effect to the ecclesiastical union to carry over into the united body property belonging to local societies formerly in subordination to the Cumberland body, which was subject to no other specific trust than that it was for the use of such bodies as religious societies. As shown in a note in 24 L.R.A.(N.S.) 717, however, the courts of last resort of Missouri and Tennessee, although reluctant to interpose obstacles in the way of effective church unity, have been unable to uphold this particular attempt so far as it affects property rights. The support which the Indiana appellate court lent to this side of the question has, as already indicated, been nullified, except so far as the intrinsic merits of its opinions may carry weight, by the decision of the supreme court of that state. Of course, none of the courts assume to interfere with purely ecclesiastical relations of either of the two bodies, or of their members; and the effect of the decisions is strictly limited to the property rights involved, so that, in either view, there is no suspicion of interference with the fundamental principles of religious liberty or of separation of church and state.



New or Proposed Legislation

Saving Niagara from Desecration.—In June 1906, Congress passed an act authorizing and directing the Secretary of War to appoint "a committee of landscape architects, and others well fitted by training and experience, to advise him in devising such measures as will result in protecting and preserving and improving the scenic aspect on the American side of the Niagara river, particularly in what is known as the milling district, immediately below the falls, where a succession of ugly factories and power houses occupy the brink of the gorge for nearly a mile. In their report, this commission recommend, as the only permanent solution of the problem, the acquisition by the United States of a strip of property extending the whole length of the gorge, not less than 100 yards wide, along the rim, this strip to be converted into a national park and reservation as fast as the buildings now upon it can be gradually removed. The commission suggests that this may be done practically without cost to the United States, by taxing the companies that use the water of Niagara river for manufacturing purposes. This is done by the Canadian government.

The rapids above the falls, the American falls, and Goat island, are within the area of the state reservation, and their preservation is assured. But more important in many ways than the tract in the immediate vicinity of the brink of the falls is the gorge, where is witnessed an exhibition of power more impressive to many observers than that of the great cataract itself, seen, as it generally is, from the top.

If present conditions continue, and the gorge remains in private ownership, not

only will the disfigurements increase and multiply, but the extent of them will increase rapidly, until the whole gorge will entirely lose its value from an æsthetic point of view.

By means of additional legislation and agreements with the Canadian government, the diversion of water for power purposes should be kept within such limits that the impressiveness of the cataract shall not be diminished. Nothing less will suffice to preserve to the world this great natural heritage, the destruction of which for commercial purposes is a crime against all peoples for all time. A bill has been prepared at the War Department under the direction of Secretary Dickinson, and has been introduced into both Houses, to carry out the recommendations of the commission, and the multitudes of people who feel a share in the ownership of the world's greatest wonder will be gratified when it becomes a law.

Government Mail Cars.—To protect the lives of government postal employees on trains, and prevent the loss of mail by fire, Representative Carey (Rep. Wis.) is in favor of the government's buying its own steel mail cars, and contracting with the railroads for their hauling. He has introduced a bill authorizing the Postmaster General to contract for the cars, to put them in use as rapidly as possible, and to have all railroads fully equipped with them by 1915. This is a most meritorious measure for a reason other than those mentioned. Under the present system the government hires the railway companies to carry the mail, and not only pays so much per pound for all

the mail carried, but in addition pays rental for the cars in which the carrying is done. This double system of charging is peculiar to government mail contracts, and is not demanded of other shippers. The railroads furnish special cars to the express companies, and transport their merchandise for a percentage of the receipts, but do not require car rentals of them. The rental which the government pays is said to average \$6,250 per year per car, for cars whose construction cost but from \$2,500 to \$5,000 each. There is no reason why the government should pay more for the transportation of mails than express companies pay for the transportation of express of similar weight and character. No private enterprise could afford to submit to such exactions.

Presidential Pensions.—The bill to put Ex-Presidents on the retired list as Commanders in Chief of the Army and Navy, at a salary of \$10,000 a year, was reported adversely by the Senate committee on pensions. This measure would affect Ex-President Roosevelt only. He probably does not desire a pension or need one, and he would doubtless have preferred that no specific grant in his case should have been asked. Most of our Presidents, however, have left office far from rich men, and have had to enter upon business or professional careers. It is quite likely that sooner or later Congress will deem it wise to provide a suitable pension for all Ex-Presidents so as to relieve them from the necessity of seeking employments not in keeping with the dignity that should attach to former chief magistrates of the nation. The position which an Ex-President has occupied demands that he maintain a certain reasonable high standard of living, that he respond to invitations over the country to make addresses, that he entertain diplomats and persons of high standing with whom he was brought into daily communication during his official life. This he should be enabled to do.

The provision of the bill giving pensions of \$5000 a year to Mrs. Harrison and Mrs. Cleveland was reported favorably. This was done in accordance with

a well-established custom. Pensions of \$5000 a year, the report shows, have been awarded to Sarah Childress Polk, Julia Gardner Tyler, Mary Lincoln, Julia Dent Grant, Lucretia R. Garfield, and Ida S. McKinley. Bettie Taylor Dandridge, daughter of General Zachary Taylor, was also given a pension by Congress, and Mrs. William Henry Harrison was voted \$25,000. In opposing the pensions to Mrs. Cleveland and Mrs. Harrison, the minority report says the bill "rests upon public sentiment that the widow of one who has held the important position of President of the United States should at all times be enabled to occupy a social position which, if not commensurate with that which she held before, at least shall be one which will be free from the necessities of a life of rigid economy. It is reasonably certain that what we understand as destitution threatens neither of these persons. We still believe that we should limit these grants to the military arm of the government."

Franking Privileges.—The carriage free of postage of all mail matter sent by Theodore Roosevelt is proposed by Representative Hamilton Fish, of New York, who introduced a bill to that effect. The bill is very brief, and reads as follows: "That all mail matter sent by Theodore Roosevelt, late President of the United States, under his written autograph signature, be conveyed free of postage during his natural life." Franking privileges are now enjoyed by both Mrs. Cleveland and Mrs. Harrison, widows of Ex-Presidents. A similar privilege was given to Martha Washington, Dolly Madison, Louise Catherine Adams, and Mrs. William Henry Harrison.

Revolutionizing an Industry.—An ordinance has been passed by the city council of a Nebraska town which is appropriately denominated "Waterloo," and signed by the mayor, which, among other things, provides: "It shall be unlawful for any barber in this town to eat onions between 7 o'clock A. M. and 9 P. M. No barber while shaving a customer shall insert his thumb or finger in the said customer's mouth; shall not discuss the

gossip of the town, and shall not use tobacco while working over a chair, and shall not insist upon a customer having his neck shaved or his hair singed." The worm has turned, patience has ceased to be a virtue, and in at least one town the patrons of tonsorial parlors will be the envy of the civilized world.

Age Retirement.—The House committee on reforming the civil service favorably reported, on April 20th, a bill providing age retirement for the *personnel* of the classified civil service through a compulsory savings plan. The bill is the result of an exhaustive investigation of similar plans in force among foreign governments and corporations, as well as in many American industrial institutions. Actually it is the same plan that was recently adopted by England, and is similar in many respects to the systems of retirement now in operation in France, Germany, Holland, Turkey, and New Zealand. This measure, if enacted into law, would retire on annuities employees whose advanced years have decreased their capacity for service. Except in the case of those already superannuated, or soon to reach that stage, the annuities would be paid by deductions from salaries, which would be returned to employees in the event of resignation, or to their heirs in case of death.

Representative Gilett of Massachusetts, chairman of the committee, is of opinion that the expense consequent upon its enactment would be more than overbalanced by the unquestioned advantage to the service that would ensue.

Aeroplane Law.—A New York lawyer has written to the Aero Club of America, urging that they develop a code of laws to govern aerial flight, and submit it to Congress. The law, he urges, should provide for the licensing of all aerial machines and their drivers, and should provide for the use of all practicable safety devices to prevent accident. Flying machines should be restricted in his opinion, to certain hours of the day and to certain portions of the heavens. Pro-

vision should also be made, he contends, for the safety of the pedestrian from danger of being stricken down by a falling aeronaut or aerial machinery. This is undoubtedly a subject that with increasing frequency will claim the attention of our legislatures and courts.

Foreign Steamships and the Corporation Tax.—The Constitution prohibits a tax on exports, but such a tax will virtually be imposed, says the New York Herald, if Attorney General Wickersham is sustained in his contention that foreign steamship companies must pay the new corporation tax upon their net income from business in the United States.

While the constitutionality of the tax as applied to domestic corporations is being questioned in more than a dozen suits before the Federal courts, it seems a pity that this new complication should be created. In his opinion, the attorney general remarks that these companies have a large amount of capital invested in wharves, warehouses, and other facilities essential to carrying on their business in this country. As the Journal of Commerce points out, the principal ocean lines here do not own the wharves and warehouses, but lease such as they use from the city at high rentals, and the law allows them to deduct from their gross income all expenses, including rentals and franchise payments. Their business is transportation on the ocean, with incidental loading and unloading at wharves here and abroad, and their contention that it is practically impossible to say just what of their income is derived from business in the United States is well founded. They point to the heavy port charges, the tonnage tax, and the poll tax they now pay of \$4 on each immigrant, as evidence that they are contributing heavily to the national revenue. The natural effect of the proposed income tax would be an increase in passenger and freight charges, to meet the new government demand. It will be in effect a tax on exports, and would certainly operate to restrict our foreign commerce.



Bar Associations

Arkansas.

The Arkansas State Bar Association is to hold its annual meeting in Pine Bluff on June 1st and 2d. About 200 lawyers annually attend the sessions of the State Association, and it is expected that fully that many will take advantage of the many social features and other entertainment to be provided for them. The membership of the state organization numbers about 300.

California.

At the semi-annual banquet of the Los Angeles Bar Association, the justices of the supreme court were the guests of honor. Among the speakers were: Mr. Justice M. C. Sloss and Mr. Justice Henry A. Melvin, of the supreme court, former Mayor Edward F. Dunne, of Chicago, Mr. Walter J. Trask, and Mr. Frank C. Collier.

The Friday evening lecture series before the San Francisco Bar Association has been resumed. Mr. W. D. Mansfield has delivered two lectures on the subject of "Bankruptcy Practice and Procedure."

Georgia.

The next meeting of the Georgia Bar Association will be held at Athens, Georgia, June 9 and 10, 1910.

Illinois.

Attorney General Wickersham has accepted the invitation of the Illinois State Bar Association to be the guest of honor at its annual banquet in June. It is un-

derstood the Attorney General will talk on the law's delay, and what legislation President Taft desires, to obviate it.

The officers of the Macon County (Ill.) Bar Association for the ensuing year are: President, W. C. Outten; Vice President, J. H. McCoy; Secretary and Treasurer, J. S. Baldwin; Directors, J. M. Gray, R. P. Vail, and John R. Fitzgerald.

Iowa.

The next meeting of the Iowa State Bar Association will be held at Des Moines, Iowa, on June 23 and 24.

Michigan.

The Gratiot County (Mich.) Bar Association held its annual meeting at the Park House. About fifty members and their wives attended the meeting, which opened with a banquet. George P. Stone, of Ithaca, acted as toastmaster. Judge Kelly S. Searl and John T. Matthews, of Ithaca, William A. Bahlke and D. Lloyd Johnson, of Alma, and Charles W. Giddings and George S. Aldrich, of St. Louis, responded. The annual business meeting was held after the banquet.

Mississippi.

The Mississippi Bar Association met at Natchez on May 3d. Hon. Richard F. Reed delivered the address of welcome, which was responded to by Hon. W. P. Tackett. Dr. T. H. Sommerville, president of the Association, in his annual address, dealt with new legislation. The annual address to the Association was

given by Judge Wilson E. Hemingway, of Little Rock, Arkansas. His subject was "The Power of Congress to Regulate Interstate Commerce." Papers were read by Mr. Gerald Brandon, of Natchez; Mr. R. B. Campbell, of Greenville; Mr. T. A. McWilliams, of Jackson; and Mr. W. O. Hart, of New Orleans. The reception given by the Natchez bar to the members of the Association was held on May 3d, at the Prentiss Club. On the following day there was a boat ride on the river, and on the 5th, the annual banquet took place. The speakers responding to toasts were: Hon. Jeff Truly, "Our Guests;" Hon. James R. McDowell, "Our Hosts;" Judge Wilson E. Hemingway, "Reminiscences of the Practice of Law in Mississippi During Reconstruction Days;" Hon. W. H. Hammer, "The Lady and the Law;" Hon. William A. Roane, "*Obiter Dicta*;" Hon. G. J. Leftwich, "*Stare Decisis*."

New Hampshire.

The next meeting of the New Hampshire Bar Association will be held at Hotel Wentworth, Newcastle, on June 25, 1910.

New Jersey.

The New Jersey Bar Association will hold its next meeting at Atlantic City, on June 17 and 18, 1910.

New York.

Supreme Court Justice Blanchard has approved papers incorporating the Washington Heights Bar Association. The association has 106 members. Its president is John W. Goff, a justice of the supreme court, Florence H. Sullivan is first vice president, Edward D. O'Brien, second vice president, and the honorary vice presidents include Supreme Court Justices McAvoy and Davis and Municipal Court Justice Sinnott.

Shut out from membership in the New York and Kings County Bar Associations, the thirty-one women lawyers of Manhattan and the twenty of Brooklyn are taking steps to form a bar association of their own.

North Carolina.

The next meeting of the North Carolina Bar Association will be held at Wrightsville Beach, North Carolina, on June 28, 29, and 30, 1910.

Ohio.

John Marshall Smedes, of the executive committee of the Ohio State Bar Association, charged with looking after Cincinnati's interests, states that the program for the annual meeting of the lawyers, July 8, at Cedar Point, will be of unusual interest. Two subjects will be presented without any speaker, and thrown open for general discussion by all members of the Association, as follows: "What legislation is needed in Ohio with reference to the liability of employers for personal injuries and compensation to injured employees," and "Modern legislation, its volume and methods." As these are vital questions touching both the lawyers and the general public, some interesting talks are expected.

Senator W. Bailey will deliver the annual address. Judge John A. Shauck, of the supreme court, will deliver an address on the life and services of the late Judge J. O. Troupe, for many years chairman of the executive committee and former president, and who died since the meeting last July. "Should Judges be Elected or Appointed" will be the subject of a debate between Judge West, formerly senator from Bellefonte, and Mr. F. B. James. The meeting will open with the annual address by Judge Burrows, a brother of United States Senator Burrows.

Pennsylvania.

The next meeting of the Pennsylvania Bar Association will be held at Cape May, New Jersey, June 28, 29, and 30, 1910.

Wisconsin.

The next meeting of the Wisconsin Bar Association will be held at Milwaukee, June 28 and 29, 1910.



Law Schools

Boston University School of Law.

Walter I. Badger, of the class of 1885, gave the third and last of his talks before the entire student body. He spoke on the "Trial of Causes." Mr. Badger's talks, which have been mainly on the mistakes of the young lawyer, and particularly his own experience in court work, have been extremely instructive and interesting to the students of the school.

That more women are entering the field of the law each year is evidenced by the fact that there are now enrolled in the Boston University Law School ten future women lawyers. This is the largest number of women that have been enrolled in the school in any one year. For many years back it was an exceptional sight to see more than one young lady in each class. Now there are two in the senior class, five in the second-year class, and three in the entering class.

Drake University.

"Frank Oertel, junior law student, Drake University," says the Des Moines News, "is distinguished in more ways than one. He is the only blind student at the institution of learning, and one of the most advanced. Oertel is but twenty-two years of age, yet ranks with the brightest in the law classes. He is a graduate of the Iowa College for the Blind at Vinton, and attended the State University at Iowa City. 'How do you study?' he was asked. 'I hear the others read and argue, and that's the way I learn the law,' he replied. Oertel's home is in Keokuk, Iowa. He is very popular in Drake."

Harvard Law School.

Ezra Ripley Thayer, of Boston, has been selected successor of the late Professor James Barr Ames, as dean of the Harvard Law School and also as Dane professor of law. His appointment was confirmed at the meeting of the overseers. The new dean is a member of the law firm of Storey, Thorndike, Palmer, & Thayer, and since his admission to the bar had been engaged in general practice.

Jefferson School of Law.

A. Floyd Byrd delivered a lecture on "Advocacy," before the students of the Jefferson School of Law. Mr. Byrd has participated in a number of famous trials in eastern Kentucky and his lecture was attended not only by the students, but by many of the members of the Louisville bar. Judge Thomas R. Gordon, in charge of the department of torts, each year invites some leading member of the Kentucky bar to deliver a lecture on how cases in court should be conducted.

University of Maine.

The University of Maine College of Law has added this spring to its regular list of lecturers, Hon. E. H. Blake, of Bangor, an authority on admiralty law.

Hon. H. M. Heath, of Augusta, lectured on cross-examination, and Hon. I. W. Dyer, of Portland, has given a series of lectures on Federal procedure.

Hon. L. C. Southard, LL.D., of Boston, has given his course on medico-legal relations, and General Charles Hamlin,

son of Vice President Hannibal Hamlin, has finished his lectures on bankruptcy. All these lectures have been of great excellence, and have been delivered by masters in their specialty.

Chief Justice L. A. Emery, of the supreme judicial court of the state, delivered, during May, his course of lectures on probate law and practice, lectures that are always looked forward to with the greatest interest.

The editorial board of the *Maine Law Review*, under the leadership of Mr. George R. Sweetser, editor-in-chief, and Mr. D. I. Gould, managing editor, can look back upon work well done. They hand over the work of the *Maine Law Review* to their successors just elected, Mr. Frank Fellows, Mr. H. B. Rand, and the other members of the board, in excellent condition.

University of Minnesota.

Mr. William Collins, '91, has given up his private practice, and has been added to the force of instructors.

Professor Willis has published two books during the year, which have been favorably received. His work on "Contracts" was recommended very highly, and his work on "Damages" was used by the students this spring.

University of North Dakota.

The College of Law of the University of North Dakota will be open for a summer session, beginning June 20th and closing August 27th. A limited number of the regular courses will be offered.

Andrew A. Bruce, dean of the College of Law, University of North Dakota, has contributed two interesting articles to periodical legal literature, one entitled "Conservation of Our Natural Resources and Natural Strength and Virility," appearing in the *University of Pennsylvania Law Review*, Vol. 58, number 3, and one on the subject of the "Illinois Ten-Hour Labor Law for Women" in the *Michigan Law Review*, Vol. 8, number 1.

San Francisco Law School.

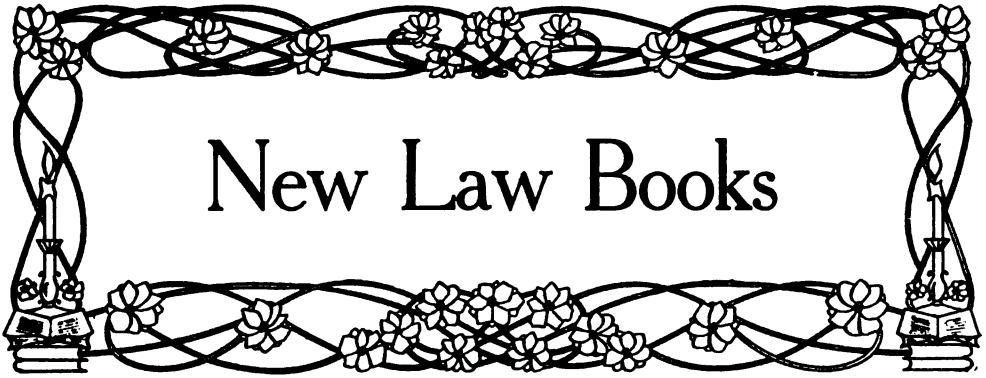
The San Francisco Law School, although but a year old, has the greatest attendance of any evening school in the West. A large number of students have already registered for the fall term, and the indications are that the incoming first year class will be twice as large as that of a year ago. Several experienced instructors will be added to the faculty with the beginning of the fall term. Robert W. Harrison, former assistant district attorney of San Francisco, is president of the institution, and the dean is James A. Ballentine, who is connected with the Hastings College of Law, a department of the University of California.

University of Southern California Law School.

The two debates, one with George Washington University and the other with Cornell University, both of which were held in Los Angeles, were a feature of the school year. Never before has any debating team traveled so great a distance. The George Washington University team was beaten in the debate on the "Direct Primary" question, but Cornell University won the debate on "The Commission Form of Government."

George Washington University.

The friends and students of Dean William R. Vance, of George Washington University Law School, tendered him a testimonial banquet, in honor of his services to the university and the legal profession of the District of Columbia. Among the speakers were President Charles W. Needham, of George Washington University, Justice John M. Harlan, Levi Cooke, Henry P. Du Bois, and Dr. William R. Vance. Dean Vance has accepted a professorship at Yale University, and at the close of the present term severs his connection with the local institution.



New Law Books

Law of Mechanics' Liens and Building Contracts. By S. Bloom (Bancroft-Whitney Company, San Francisco, Cal.) Sheep or Buckram. \$7.50.

This work is designed and adapted for use in the Western states. It contains carefully prepared and annotated forms for contracts, notices, claims, complaints, etc., suitable for use in Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

The enormous amount of building and contract work now going on in the West has rendered a treatise, written in the light of Western conditions and citing Western laws and Western decisions, an imperative necessity. The citations of authorities under each heading are grouped by states. A table of correlative sections of the statutes of the different states is appended, and will be found useful for the purpose of comparison.

The work deals not only with the substantive law upon the subject, but with pleading and procedure. But the author, while treating his topic in a complete and exhaustive manner, has never lost sight of the practical nature of the subject. His statements are right to the point, and enable the lawyer, the builder, the contractor, the architect, or the property owner to solve his problem in short order.

"Interstate Transportation." By Harry C. Barnes. (Bobbs - Merrill Company, Indianapolis, Ind.) Buckram, \$6.

This work is a systematic and scientific treatment of interstate transportation under the interstate commerce act

and acts amendatory and supplementary thereto. Among the important subjects treated are: Federal Regulation; The Interstate Commerce Commission; Rate Schedules; Rebates; Passenger Fares; Connecting Carriers; Pooling Contracts; Carrier's Liability; Employer's Liability; The Sherman Anti-Trust Law; Penalties and Forfeitures, etc.

All the decisions and rulings of the Interstate Commerce Commission and the Federal courts, together with appeals to the Supreme Court, have been examined down to date. Citations are given to the Federal Reporter, C. C. A. Reports, U. S. Supreme Court Reports, and to the decisions of the Interstate Commerce Commission. The appendices of the book contain full reprints of all important statutes governing interstate transportation, and the act to regulate commerce is shown in all its several stages of development. The volume also contains a complete Table of Cases and an Index.

The lawyer who has not a first-hand knowledge of transportation conditions will welcome this book. Before taking up the practice of law, Mr. Barnes had about ten years of traffic and railroad experience, and he treats the subject from the practical, as well as from the legal, point of view. Combining these two elements, Barnes on Interstate Transportation is a distinct addition to the literature upon the subject, a book of exceeding great practical value to the lawyer.

Black's "Constitutional Law." (Hornbook Series) 3d ed. Buckram, \$3.75.

Willis on "Damages." 1 vol. \$3.

"Modern Law of Labor Unions." By W. A. Martin. Buckram, \$6.

"Landlord and Tenant." By Herbert T. Tiffany. 2 vols. \$13.

"Illinois Personal Injury Laws: A Trial Manual." By James A. Farmer, \$4.

Mill's "Annotated Statutes of Colorado." New edition. By John H. Gabriel. 2 vols. \$15. Ready in July.

"Index-Analysis of the New Jersey Statutes, 1896-1909." \$5.35.

Kerr's "Annotated Supplement to Kerr's Cyc. Codes of California." \$10.

Wurts's "New Florida Digest." \$15.

Pattison's "Missouri Digest." Vol. 9. \$7.50

"Cross Reference Annual Series." Being a continuation or supplemental digest to Pepper & Lewis's Digest of Pennsylvania Decisions, by George Wharton Pepper, William Draper Lewis, and Samuel Dreher Matlack. Vol. 3. Buckram, \$10.

"Analyzed Citations of Rhode Island Cases." Showing where all Rhode Island cases have been cited in the Rhode Island Reports, and the exact point of each case cited. By Clarence F. Allen. \$5.

Recent Articles in Law Journals and Reviews

Baldwin

"Chief Justice Baldwin's Retirement from the Connecticut Supreme Court of Errors."—22 Green Bag, 207.

Bills and Notes

"The Negotiable Instruments Law."—27 Banking Law Journal, 220, 316.

Brewer, David Josiah

"Sketch of."—16 Case and Comment, 361.

Carriers

"Contract Limitations of the Common Carrier's Liability."—8 Michigan Law Review, 531.

Charities

"Administration of Charities."—26 Law Quarterly Review, 146.

Conflict of Laws

"The Renvoi Theory and the Application of Foreign Law, II."—10 Columbia Law Review, 327.

"The Individual Liability of Stockholders and the Conflict of Laws."—10 Columbia Law Review, 283.

Corporations

"Corporation Liens on Stock."—8 Michigan Law Review, 555.

Courts

"An Ironical Attack on the Doctrine of *Stare Decisis*."—22 Green Bag, 220.

Criminal Law

"The Criminal Statistics of 1908."—74 Justice of the Peace, 194.

"The Third Degree."—16 Case and Comment, 370.

"Motor Car Drivers and Previous Convictions."—74 Justice of the Peace, 158.

Currency

"Credits and Currency for an Emergency."—27 Banking Law Journal, 225.

Deeds

"The Place of Writing in Conveyancing and Contract."—26 Law Quarterly Review, 113.

Divorce

"A Summary of the Divorce Situation in England."—22 Green Bag, 209.

Equitable Conversion

"Equitable Conversion in Pennsylvania."—58 University of Pennsylvania Law Review, 455.

Equity

"Equity Jurisdiction over the Person and Property of Incompetent Persons."—16 Virginia Law Register, 1.

Evidence

"The Confession of an Accomplice Involving the Guilt of His Fellow Prisoner."—74 Justice of the Peace, 170, 183.

"Privileged Communications to Attorneys."—21 Bench and Bar, 13.

Inns of Court

"The Exclusion of Attorneys from the Inns of Court."—26 Law Quarterly Review, 137.

Intoxicating Liquors

"Beer Dealers' Retail Off-Licenses."—74 Justice of the Peace, 158.

Libel

"Is Dictation to a Stenographer a Publication in the Law of Libel?"—70 Central Law Journal, 277.

Lurton

"Horace Harmon Lurton."—58 University of Pennsylvania Law Review, 495.

Mortgage

"Assumption of Liability by Mortgagor's Transferee."—20 Madras Law Journal, 53.

Parent and Child

"A Critical Note on the Adoption of a Married Person as Affecting the

Status of His Children Born before Adoption."—20 Madras Law Journal, 62.

Pensions

"Old Age Pensions."—16 Case and Comment, 364.

Poor and Poor Laws

"Boards of Guardians and Their Future."—74 Justice of the Peace, 193.

Taxes

"A Review of Authorities upon the Constitutionality of the Federal Corporation Tax Statute."—70 Central Law Journal, 259.

Torts

"On Negligence and Deceit in the Law of Torts."—26 Law Quarterly Review, 159.

Waters

"Extent of Public Trust in Land under Navigable Water."—16 Case and Comment, 367.

Wills

"The Vesting and Devesting of Rights under a Will in Roman-Dutch Law."—26 Law Quarterly Review, 126.

Witnesses

"The Art of Cross-Examination."—46 Canada Law Journal, 233.

Index to Volume 16 Ready.

The Index and Title Page for volume 16 of CASE AND COMMENT has been completed, and will be sent free on application to anyone desiring it.

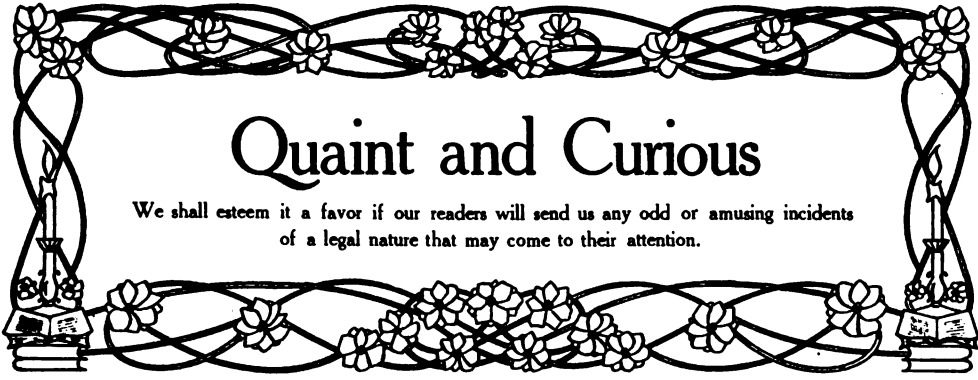
It contains, in alphabetical order, a list of the subjects which have been treated in the columns of the magazine during the past year, as well as the names of

noted members of the bar or individuals who have received mention.

To those who keep a file of CASE AND COMMENT, or are accustomed to have the year's copies bound, it will be found to be a great convenience, rendering a large amount of valuable information readily accessible.

One of the prime dangers of civilization has always been its tendency to cause the loss of the virile fighting virtues, of the fighting edge. When men get too comfortable and lead too luxurious lives there is always danger lest the softness eat like an acid into their manliness of fiber.—Ex-President Roosevelt

In his lecture before the University of Berlin, May 12, 1910.



Quaint and Curious

We shall esteem it a favor if our readers will send us any odd or amusing incidents of a legal nature that may come to their attention.

Boswell's Johnson.—In *Boswell v. Johnson*, 5 Ga. App. 251, 252, Powell, J., said: "This is not, as the title of the case might suggest, an action by Dr. Johnson against his friend Boswell, for any failure of the latter to include all the sayings and doings, witticisms (good, bad, and indifferent, real or imaginary), and divers eccentricities of the former, in the famous biography, nor yet an action by the faithful Boswell against the learned doctor for services in his behalf, but is a prosaic affair between horse-dealer Johnson and mechanic Boswell as to the purchase price of two mules."

The Law's Delay.—In the two villages of Luceran and Lancoque, in the Alps Maritimes, France, a public holiday was kept, to celebrate the end of a great lawsuit which had kept the two villages divided since November 14, 1462. The question of dispute was the possession of a piece of land at Lova, which each village claimed. The court at Nice definitely settled the matter by dividing the land equally between the villages. The total cost of the lawsuit during the 444 years of its continuance amounts to £30,000, while the value of the land in dispute was about £100. The law papers which had accumulated were docketed in 1,856 parcels, which weighed 16 tons, and were stored in a large disused church.—*Lancaster Law Review*.

The Law of the Case.—It appears in *King v. Hopkins*, 57 N. H. 337, that John Dudley, a trader, who, in 1796, held the position of associate justice of the New Hampshire supreme court of judicature, delivered the following unique charge to the jury: "You have heard,

gentlemen of the jury, what has been said in this case by the lawyers,—the rascals. But, no, I will not abuse them. It is their business to make a good case for their clients. They are paid for it, and they have done in this case well enough. But you and I, gentlemen, have something else to consider. They talk of law. Why, gentlemen, it is not law that we want, but justice. They would govern us by the common law of England. Trust me, gentlemen, common sense is a much safer guide for us,—the common sense of Raymond, Epping, Exeter, and the other towns which have sent us here to try this case between two of our neighbors. A clear head and an honest heart are worth more than all the law of the lawyers. There was one good thing said at the bar. It was from Shakespeare, an English player, I believe. No matter; it is good enough almost to be in the Bible. It is this: 'Be just, and fear not.' That, gentlemen, is law enough in this case, and law enough in any case. 'Be just, and fear not.' It is our business to do justice between the parties. Not by any quirk of the law out of Coke or Blackstone, books that I never read, and never will, but by common-sense and common honesty, as between man and man. That is our business, and the curse of God is upon us if we neglect, or evade, or turn from it. And now, Mr. Sheriff, take out the jury; and you, Mr. Foreman, do not keep us waiting with idle talk, of which there has been too much already, about matters which have nothing to do with the case. Give us an honest verdict, of which, as plain, commonsense men, you need not be ashamed."

A Pledge in Contract Form.—The party of the second part, who had been in the habit of imbibing too freely, promised his wife to be good in the following form and manner :

THIS INDENTURE, made between Jane Doe, party of the first part, and John Doe, party of the second part,

WITNESSETH :

That per upon the party of the second part has used intoxicating liquors, and whereas, is now doing all that he can to prevent continuance of intoxicating liquors, and whereas, it may interfere with the business generally of the party of the second part, to not enter saloons, hotels, or restaurants where liquors are sold, that the party of the second part reserves all right to enter hotels, saloons, or restaurants where liquors are sold, in his general way of doing business.

IT IS FURTHER CONCEDED by the party of the second part, that the party of the second part shall not indulge in the use of liquors in any form, neither malt, spirits, or wine, but reserves the rights at any time to take cigars or tobacco in any of the above-mentioned places.

NOW, to her, for and in consideration of the above, _____, the party of the second part reserves the right agreed upon in this agreement, and that he shall at all times be the agent of the party of the second part, of all the land deeded to the party of the first part.

A personal service of this contract and agreement, or copy thereof, shall be excepted by the party of the second part.

Should he come home to the party of the first part, or to their home where they now reside, in an intoxicated condition, he shall waive his rights in and above all precedence, and shall retire at once, without legal authority or force.

A personal service of this agreement shall be construed, if the party of the second part shall come home to the place and abode of the party of the first part in an known intoxicated condition.

NOW, the essence of this agreement is that the party of the second part shall discontinue the use of all intoxicating liquors.

The above shall be construed, that it must be known to others than the party of

the first part, otherwise this agreement could be misconstrued.

IN WITNESS WHEREOF we have hereunto set our hands and seals, this — day of —, 1909.

May a Wife Chew Tobacco?—Whether the fact that a wife is addicted to the habit of chewing tobacco is cruel treatment of the husband, within the meaning of the statute, is a question that will be interpreted by Judge Joseph G. Lefler when a divorce case recently instituted in the Indiana circuit court is called. The parties have been married twenty-eight years, and the husband says he can no longer stand his wife's habit of chewing.

What Can He Say?—While engaged in the trial of the \$300,000 damage suit of the Goodwin Manufacturing Company against the Edison Phonograph Works, former Attorney General Robert H. McCarter thrust one hand into his pocket, and stopped suddenly in his argument, as he drew forth two or three letters. For a moment those in the court room thought that he was suffering from some sort of an attack. He had stopped so suddenly in his remarks that there seemed to be no other explanation. After gazing ruefully at the letters for a few moments, the former Attorney General offered the following brief explanation, which thrilled the court room; "My wife gave me these letters to post this morning."

Dog is "Perishable Property."—Deciding that a dog is "perishable property" under the law, District Court Judge Ingersoll ordered the immediate sale of a valuable setter dog, seized by court bailiffs to satisfy a judgment in an action in which the plaintiff alleged that the defendant secured diamonds from him recently, but that the check given in payment was stopped before he could collect. The plaintiff recovered judgment, and the dog was seized in a kennel where it had been left by its owner during his absence from the city. Lawyers for the judgment creditor then made the novel claim that the dog was "perishable property," and asked that it be sold at once to satisfy the claim, and this contention was allowed by the court.

A Floating Court.—Governor Walter E. Clark, of Alaska, has arranged for the most novel court of justice in the world,—a floating court. Treasury officials have promised him to put a revenue cutter at the service of one of the judges of Alaska this summer. The judge will, with the cutter, visit 2,000 miles of Alaska shore, stopping at points where there are no judges and no courts to administer the laws of this country. Often in the summer Alaska's coast line is dotted with salmon canneries, transient in character, and many acts of lawlessness occur at these places. The judge who will make the trip will have with him a deputy marshal, an assistant United States attorney, and grand and petit juries.

Public Policy.—In *Breeden v. Frankfort Marine Accident & Plate Glass Insurance Company*, 220 Mo. 327, 19 S. W. 576, Judge Lamm discusses this question in the following entertaining manner: "Speaking of public policy, the student of history speedily learns that to-day it is one thing and to-morrow another. Speaking of it judicially, it has the same weather-vane peculiarity, as the prying mind will discover. As pointed out in the cases cited from Maryland (*American Casualty Co.'s Case*, 82 Md. 574) and New Jersey (*Trenton Passenger R. Co.'s Case*, 60 N. J. L. 246), public policy in relation to trades, manufacturing, the duty and liability of carriers and employers, has constantly varied to keep pace with the growth and development of such occupations and businesses. I myself, in the fervor of interpretation, once (by way of metaphor) characterized public policy as the 'hand-maiden of sound judicial exposition.' *Hale v. Stimson*, 198 Mo. 165, 95 S. W. 885. And a very shrewd old English judge (*Burrough, J.*, in *Richardson v. Mellish*, 2 Bing. Com. Pl. 252) long since characterized it as an 'unruly horse' likely to lead one from the sound law, and 'never argued at all but when other points fail.' My Brother Gantt brought these two metaphors on the carpet in *State ex rel. Scott v. Dirckx*, 211 Mo. 579, 111 S. W. 1, seated them there *vis-à-vis*, and left them to confront each other for all time."

Judicial Amenities.—An amusing instance of criticism and counter criticism between appellate and trial courts is to be found in *Wenger v. Barnhart*, 55 Pa. St. 500, in which two reversals, upon a first and a second trial, are reported. The supreme court, by Agnew, J., began its first opinion by saying: We think that the effect of the charge was to mislead the jury on the vital point of the case. Taken singly, perhaps no part of the charge can be said to be clearly erroneous. Thereupon, the trial judge, on coming to charge the jury a second time, remarked that after reading the opinion of the supreme court he experienced some difficulty in determining how to charge the jury a second time, as he was unable to discover anything to omit or change in the former charge, to meet the criticism of the court of review. The error, said he, was not in the parts, but in the whole; the parts were sound, but the whole defective,—the maxim, *Falsus in uno, falsus in omnibus*, did not apply, but rather this,—*Falsum in nullo, falsum in omnibus*; not clearly wrong in any particular, but wrong altogether.

"We will not step out of our way," said Judge Agnew, again speaking for the court in beginning the second opinion for reversal, and with great dignity, "to notice the moods of judges in the lower courts when they make the reversal of their judgments a personal affair, and lose their temper, and it is unnecessary to vindicate our unanimous opinions."

Another instance of judicial pleasantry occurs in *Roberts v. Meighan*, 74 Minn. 273, where Cauty, J., refused to concur in the judgment of the court, and began by saying: "For the reasons stated in the foregoing opinion [that of the majority] I dissent."

No Closed Season.—"The people of this state," observed Chief Justice Richardson, in *Petingill v. Rideout*, 6 N. H. 454, "want no additional stimulants to prosecute offenders. Rogues are almost the only game our people have to pursue, and they are by no means backward in the chase."



Judges and Lawyers

Chicago's Energetic State's Attorney

John E. W. Wayman, the state's attorney of Cook county, Illinois, is a man of positive conviction and great initiative. The work which he has performed in this office has attracted to him state-wide attention, and gives promise of bringing him yet more prominently before the people.

When he came into office seventeen months ago there were pending about 1,600 cases in the criminal court. This number has now been reduced to about 800, although 3,151 indictments were returned during the first year of his administration. Seventy-five per cent of the cases tried in 1909 resulted in conviction. He has waged a relentless warfare against graft, notably in the Madden and McCann Cases.

Mr. Wayman was born at Glen Easton, West Virginia, on September 16, 1872. At eighteen years of age he was a farmer's boy, with an ambition to go to college. He did so, graduating at Bethany College in 1894. He had a civil engineer's training, but he wanted to become a lawyer. He came to Chicago, and en-

tered the employment of Spaulding & Merrick. In the meantime he studied law at night, and was admitted to the bar in 1898. Shortly thereafter he entered upon

the duties of his profession, and soon won recognition as an able and learned advocate. He enjoyed a wide general practice, and was unusually successful in the defense of criminal cases. He is an eloquent and vigorous speaker, and has made many political addresses. He was elected state's attorney in 1908.

Although a very busy man Mr. Wayman indulges in two scholastic hobbies. He is a thorough Greek and Shakespearean scholar, and has frequently lectured

upon the great dramatist.



HON. JOHN E. W. WAYMAN

Mrs. Clara Shortridge Foltz, of the Los Angeles county bar, has been appointed a deputy district attorney under District Attorney John D. Fredericks. It is said that she is the first woman to hold a position of this kind in the United States.

New York's Attorney General



HON. EDWARD R. O'MALLEY

The regulation of the milk business by the state will strike most people as a novel idea. State regulation of public service corporations is now a well-settled policy, but the milk business stands on a

separate footing. The milk dealer owes nothing to the state. He does not operate under a franchise. Why should he be placed under state supervision or regulation any more than dealers in other commodities? Attorney General O'Malley answers this question by saying that he handles one of the common necessities of life, and that in New York city a monopoly has been created which oppresses the consumer on the one hand and the producer on the other. He contends that the state must regulate milk prices, and states that, if a satisfactory method of regulating the prices of such articles of necessity as milk is not brought forward, a demand will be made for legislative authority to permit the state or municipalities to undertake the distribution of such articles among their citizens. He suggests the appointment of a legislative committee or commission by the governor, to investigate the legal, economic, and practical questions involved in the framing of a bill to regulate the prices and profits made by corporations dealing in articles of common necessity, such as milk, and make a report to the next legislature, with recommendations on the general subject.

Edward R. O'Malley, attorney general of the state of New York, was born near Medina, Orleans county, New York, in

1863. From 1884 to 1889 he devoted his time to attending school and teaching during the winter months, and in this manner he was able to prepare himself for college. He finished his preliminary education in the Medina Free Academy, and entered Cornell College of Law in September, 1889, from which he was graduated in 1891. In 1892 he opened offices in Buffalo for private practice. In 1895, Mr. O'Malley became city attorney of Buffalo. During the four years which he served in the corporation counsel's office, he gained a broad experience in all questions affecting municipalities. On January 1, 1901, he entered the assembly as representative of the second district of Erie county, where he served two years. Mr. O'Malley's record in the assembly was of a very high order. He was nominated for attorney general in 1908 on the Republican ticket, and was elected by a plurality of 144,000. Since January 1, 1909, Mr. O'Malley has been giving his time entirely to the duties of his office, and has shown himself to be an energetic and capable public servant.

Captain Frank B. Pratt, a distinguished member of the Mississippi bar, died April 19th, 1910, on his birthday; having been born in Worcester, Massachusetts, April 19, 1832. He went to Canton, Mississippi, in 1866, and had practised his profession in that city until a month preceding his last illness. He was widely known through central Mississippi as an able lawyer and cultured gentleman of the old school.

Judge Edward Blount Talbot, the nestor of the Iberville Louisiana bar, died recently at his home near Plaquemine. Judge Talbot was a deep student, and possessed a fine legal mind. Few excelled him in the knowledge of the civil law of his state. In 1880 he was elected district attorney, and four years later district judge, and each succeeding term he was re-elected judge, until he resigned a few years since to resume the practice of law.

Oklahoma's Attorney General



HON. CHARLES WEST

For several years immediately prior to statehood, Charles West was engaged in the practice of law at Enid, Oklahoma, and on November 16th, 1907, entered upon the duties of the office of attorney general for the new state, and his field of activity has been one of incessant legal warfare, in meeting the assaults made upon the Constitution and laws of the state by the combined action of public service corporations. As chief law officer of the new state, his duties, in advising and representing the several executive and administrative officers of the state in all matters incident to the foundation of a new state government, have been very arduous, but he has discharged them in a most able and conscientious manner.

Mr. West was born on March 16th, 1872, at Savannah, Georgia. When seventeen years of age he entered Johns Hopkins University, where he took the three years academic course in two years. After his graduation he did post-graduate work at the Hopkins, and taught for a term at the Baltimore City College. At the age of twenty-one, he went to Europe, where he studied for a year at Leipsic, and in 1894 returned to America and went west, locating at Kingfisher, Oklahoma territory, where he took up the study of law.

Mr. West has always participated actively in the affairs of the National Guard of Oklahoma. He was made major, and afterwards lieutenant-colonel, which position he still holds. He participated in the Spanish-American War, as a member of the Oklahoma regiment.

Minnesota's Attorney General



HON. GEORGE T. SIMPSON

The state of Minnesota is delighted to honor its native sons wherever they are found to be worthy, and the present incumbent of the office of attorney general fills the bill in both regards. His legal work has been, to a great extent, done in Minnesota, and his training has been obtained in the local courts, although extensive practice in the Federal courts has given him a broad grasp of the relation of state enactments to the Federal laws.

George T. Simpson was born in Winona, Minnesota, in 1867. His early life was spent in that city. He attended the University of Wisconsin, and was graduated from the academic department in 1890. After completing his general education he returned to the university for a course of law. He began his practice in his home city of Winona. His talents were recognized in 1897 by his election as city attorney, a position which he filled acceptably to all the city authorities.

In 1900 he was elected county attorney of Winona county, in which capacity he served two terms. When Attorney General Young began looking for young men to help him in his work against the trusts, his attention was called to the county attorney for Winona county, and the result was an offer to Mr. Simpson to assume the larger duties of assistant attorney general. The position was accepted in 1905, and he remained assistant attorney general until his election to succeed his chief in 1909. During his term as assistant attorney general, Mr. Simpson attracted the attention of the lawyers of the state, by his handling

of the state's case in the fight against the wide-open tax amendment, by which the state gained the right to tax the iron mines in the northern part of the state at their true valuation.

Mr. Simpson personally is pleasant, unassuming, and visitors to his office are always welcomed with a smile that has won friends for him by the thousands.

Chief Justice Whitfield, of the supreme court of Mississippi, tendered his resignation to the governor as justice of the court, and was immediately appointed as one of the two commissioners of the court provided for by the legislature. After the resignation of Judge Whitfield, the entire senate went to the governor's office in a body, and requested the appointment of Senator W. D. Anderson, of Tupelo, as Judge Whitfield's successor. The governor thereupon immediately appointed Senator Anderson to the bench. The governor also appointed Frank A. McLain, of Gloster, Amity County, as the other commissioner of the court, and his appointment was confirmed by the senate, without delay. Mr. McLain was a member of Congress from his district for many years.

Benjamin Drake Magruder, formerly judge of the supreme court of Illinois, died recently at Chicago. He was seventy-two years old, and had lived in that city nearly fifty years. Mr. Magruder was one of the most influential members of the Illinois bar. He was born in Jefferson county, Mississippi, was graduated from Yale in 1856, and in 1861 went to Chicago. From 1868 to 1885 he served as master in chancery. In 1885 he was elected to the supreme bench, and in 1902 was elected chief judge of the court, serving one term. In 1906 Yale conferred on him the honorary degree of LL.D.

George W. Brandt, of the law firm of Brandt & Hoffman, died at his home in Chicago at the age of sixty-eight years. He was the author of "Brandt on Suretyship." Early in his career as a lawyer, he became surety for a relative, and was obliged to pay the debt. This episode interested him in the law of suretyship, and, perceiving the absence of a text-book on the subject, he wrote one which was published, and which still is considered the most comprehensive work on that branch of the law.

Hon. Edward Theodore Bartlett, of New York, associate justice of the court of appeals, died suddenly of heart disease at Albany. Ancestors on both sides were signers of the Declaration of Independence. He was graduated from Union College, and became a lawyer, practising in his home town and in Syracuse, and coming to the New York City Bar Association in 1868. He was closely associated in practice with the leading lawyers of that time, and was prominent in the association's fight under the Tweed *régimé*, for the purity of the judiciary. Governor Hughes, who had been a warm personal friend of Judge Bartlett for years, paid him this tribute: "For over sixteen years he has served the state in its court of last resort with conspicuous ability and fidelity, and has enjoyed general esteem and confidence."

Hon. Romulus Z. Linney died suddenly in his office in Taylorsville, North Carolina, at the age of seventy-nine. He was the possessor of the orator's gift in no small degree. He had imagination, and a high degree of such culture as is most useful to a jury lawyer. In all that section of country, when Mr. Linney was in his prime, seldom was a man tried for murder, but he numbered Mr. Linney in his array of counsel. He was one of the state's most picturesque figures, and his epigrammatic phrases were widely quoted. He served several terms in the general assembly and two terms in Congress.



The Humorous Side

If a laughable story comes your way, send it to Case and Comment,
and we will pass the laugh along.

His Excuse.—A Virginia attorney who held for collection a note given by a negro received from the debtor the following explanation of his delinquency: "Owing to the unsettled candescent inclemency of the weather and to the defalcation of the operation of the sawmill, my inability to meet my money demands has proved faultless."

Opinion Evidence.—Some time ago a dairyman of St. Paul was being prosecuted for the offense of selling a diseased cow, to be used for food. The butcher who had slaughtered the animal was called as a witness, and, after answering several other questions, this was put: "Now, Mr. M. do you consider that this cow was in such a condition that her flesh was fit for human consumption?" "No," was the reply, "but she was all right for sausages yet."

The Judge Knew.—Prospective Jurymen—If you please, your honor, I would like to be excused, because I do not understand goot English.

Judge Knox—Oh! that's all right. You won't hear any good English here.

Sure Proof.—Two young lawyers, members of the bar but a few weeks, had grown rather obstreperous in the office of one of the court clerks, says Success.

"Here, you get out of here," said the clerk.

"We don't have to," the more talkative one promptly answered. "We've got a right in here; we're lawyers."

"Ah, go on," the clerk replied, "you are nothing of the kind."

"Sure we are," the spokesman re-

joined. Then, turning to his comrade, he commanded, "Buck, go over and get your sign."

Loss of Jurisdiction.—Justice Brewer related that a justice of the peace owned a farm in Kansas that bordered on Missouri. One day the justice was sitting on a fence built directly on the state line, superintending some work his son and a farm hand were doing. The son and his companion engaged in a dispute which ended in a fist fight. The justice of the peace, Justice Brewer would explain, watched the encounter for a few minutes, and then shouted in a loud voice:

"Gentlemen, in the name of the law of the state of Kansas and by virtue of my authority, I command you to desist."

"Just then the rail broke," continued Justice Brewer, "and the justice of the peace landed in Missouri. Arising to his feet, he exclaimed:

"Give him h—, son; I have lost my jurisdiction."

Drawing the Color Line.—"Yes, I was fined \$500 for putting coloring matter in artificial butter." "Well, didn't you deserve it?" "Perhaps. But what made me mad was that the judge who imposed the fine had dyed whiskers."—Cleveland Leader.

Law and the Lady.—Former Judge Beasley, one of the counsel of the Public Service Railway Company, in summing up a case before the jury the other day, told the following story to show the unreasonableness of a woman, says the Newark Star.

"Pat Finnigan had been summoned to jury duty. Coming down stairs one morning, dressed in his Sunday clothes, his wife looked at him and said:

"Where are you going, Pat?"

"He replied: 'I'm going to coort.'

"'H'm' said the wife, and Pat stalked out. Next morning Pat came down stairs all shaven and shorn, with the same suit of clothes on.

"'And where are ye going to-day?' said the wife.

"'Sure, I'm going to coort.'

"'Ye are, are ye?'

"Pat went out and slammed the door. The third morning Pat came in and sat down to the breakfast table with the same suit of clothes on, and greeted his wife, who said:

"'And where are ye going this morning, Pat?'

"'I'm going to coort.'

"The wife laid her hands upon a rolling pin, stood before the door and said:

"'Ye're going to coort, are ye?'

"'Yis,' said Pat.

"'No, ye're not. If there's any coorting to be done it will be done right here. Go up stairs and take off thim clothes.'"

A. Mensa et Thoro.—Lawyer—"Am I to understand that your wife left your bed and board?"

Uncle Ephraim—"Not 'xactly, boss. She dun tuk mah bed an' bo'd along with her."—Puck.

Only an Experiment.—Lawyer—"Was this agreement you say you had with the defendant a tentative agreement?"

Witness—"Law, no, sir. It was only what you might call a tryin' of it, sir."—Baltimore American.

His Choice.—Judge—"You are privileged to challenge any member of the jury now being impaneled."

"Well, then, yer honor, Oi'll foight the shmall mon wid wan eye, in the corner, there fernist yez."—Metropolitan Magazine.

Will Go the Limit.—Representative Nye of Minnesota has much of the wit of his lamented brother, Bill Nye. Himself a

lawyer, Representative Nye said at a lawyers' banquet in Minneapolis:

"Lawyers have grand reputations for energy and perseverance. A lad said to his father one day:

"'Father, do lawyers tell the truth?'

"'Yes, my boy,' the father answered. 'Lawyers will do anything to win a case.'"

Lucid Intervals.—An Irishman over the age of fourscore and ten, who by strict economy had accumulated a modest fortune, and was about to die, called in the parish priest and the family lawyer, to make his last will and testament. The preliminaries of the will having been concluded, it became necessary to inquire about the debts owing to the estate. "Now, then," said the lawyer, "state explicitly the amount owed you by your friends." "Timothy Brown," replied the old man, "owes me £50, Jim Casey owes me £37, and—" "Good! Good!" ejaculated the prospective widow, "rational to the last!" "Luke Brown owes me £40," resumed the old man. "Rational to the last!" put in the eager old lady again. "To Michael Levy I owe £200." "Ah!" exclaimed the old lady, "hear him rave!"

Definition of Per Curiam.—Hon. J. H. Arrington appealed a case from the circuit court of Lawrence county, Mississippi, to the supreme court, and confidently expected a reversal. It was affirmed, and when the mandate arrived it had indorsed upon it merely the words: "Per Curiam-Affirmed."

"John" he was asked, "What does 'Per Curiam' mean?" "Well," he said, "I have examined my words and phrases, law dictionaries, encyclopædias, etc., and the best that I can make out of it is that they mean that the lawyer who appealed this case is a ——— fool."

Considerate.—Magistrate (to prisoner)—"If you were there for no dishonest purposes, why were you in your stockinged feet?"

Prisoner—"I 'eard there was sickness in the family."—Punch.

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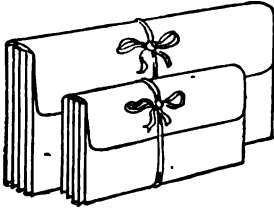
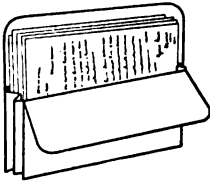
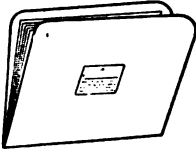
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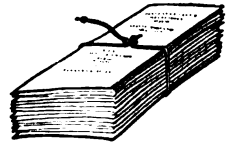
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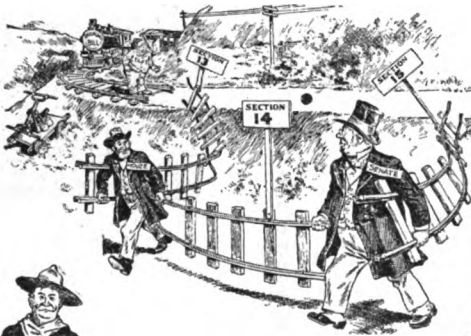
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Section By Section



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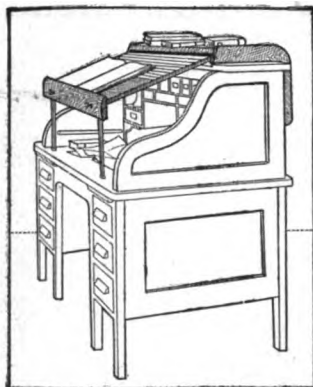
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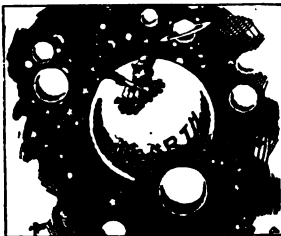
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The Pullman Paradox



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Has Anybody Here Seen Halley



—Williams in Indianapolis News

Profit and Loss



—Donnell in St. Louis Globe-Democrat

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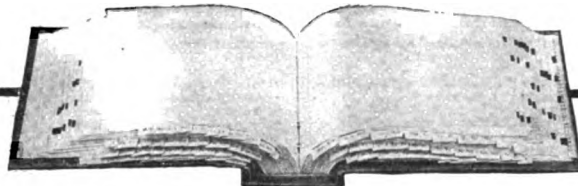
Above all, *beware* of the man who claims to be a graduate of the Davey Institute of Tree Surgery, but not now connected with the Davey Tree Expert Company. Get *his* story of why he left us, and let us give you our story of why he did. Learn of the obligations our men assume when they enter our school and our employ—and then decide whether you will be safe in hiring a man who has broken his *contract* with us.

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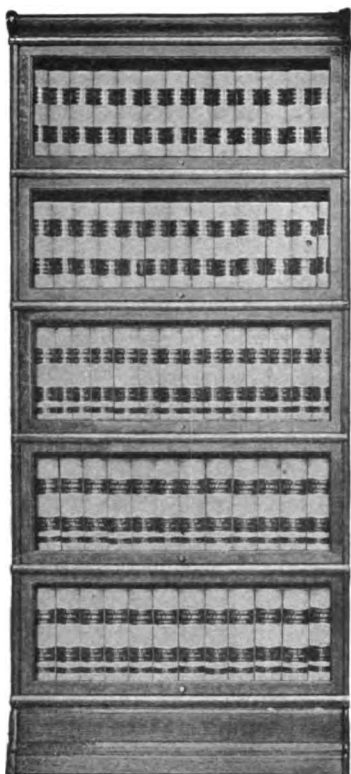
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CASE AND COMMENT

THE LAWYER'S MAGAZINE



JULY
1910
Vol. 17 No. 2

**Patriotic
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CASE AND COMMENT

*The
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New Book Announcements

The Law of Intoxicating Liquors

By HOWARD C. JOYCE



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By

W. W. WOOLEN and W. W. THORNTON

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Still in thy right hand carry gentle peace.—*Shakespeare.*

There never was a good war or a bad peace.—*B. Franklin.*

Peace hath her victories no less renowned than war.—
Milton.

As on the sea of Gallilee the Christ is whispering "Peace."—
Whittier.

Let the bugles sound the truce of God to the whole world
forever.—*Chas. Sumner.*

Nation shall not lift up sword against nation, neither shall
they learn war any more.—*Bible.*

Fondly do we hope—fervently do we pray—that this mighty
scourge of war may speedily pass away.—*A. Lincoln.*

A time will come when the science of destruction shall
bend before the arts of peace; when genius which
multiplies our powers, which creates new products,
which diffuses comfort and happiness among the great
mass of the people, shall occupy in the general estimation
of mankind that rank which reason and common
sense now assign it.—*Arago.*

Till the war-drum throbbed no longer, and the battle flags
were furled
In the Parliament of man, the Federation of the world.—
Tennyson.

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Tribunal That in Due
Season Will be In-
stalled in This Palace,
Will Promote Good
Will Among the Na-
tions and Seek to Abol-
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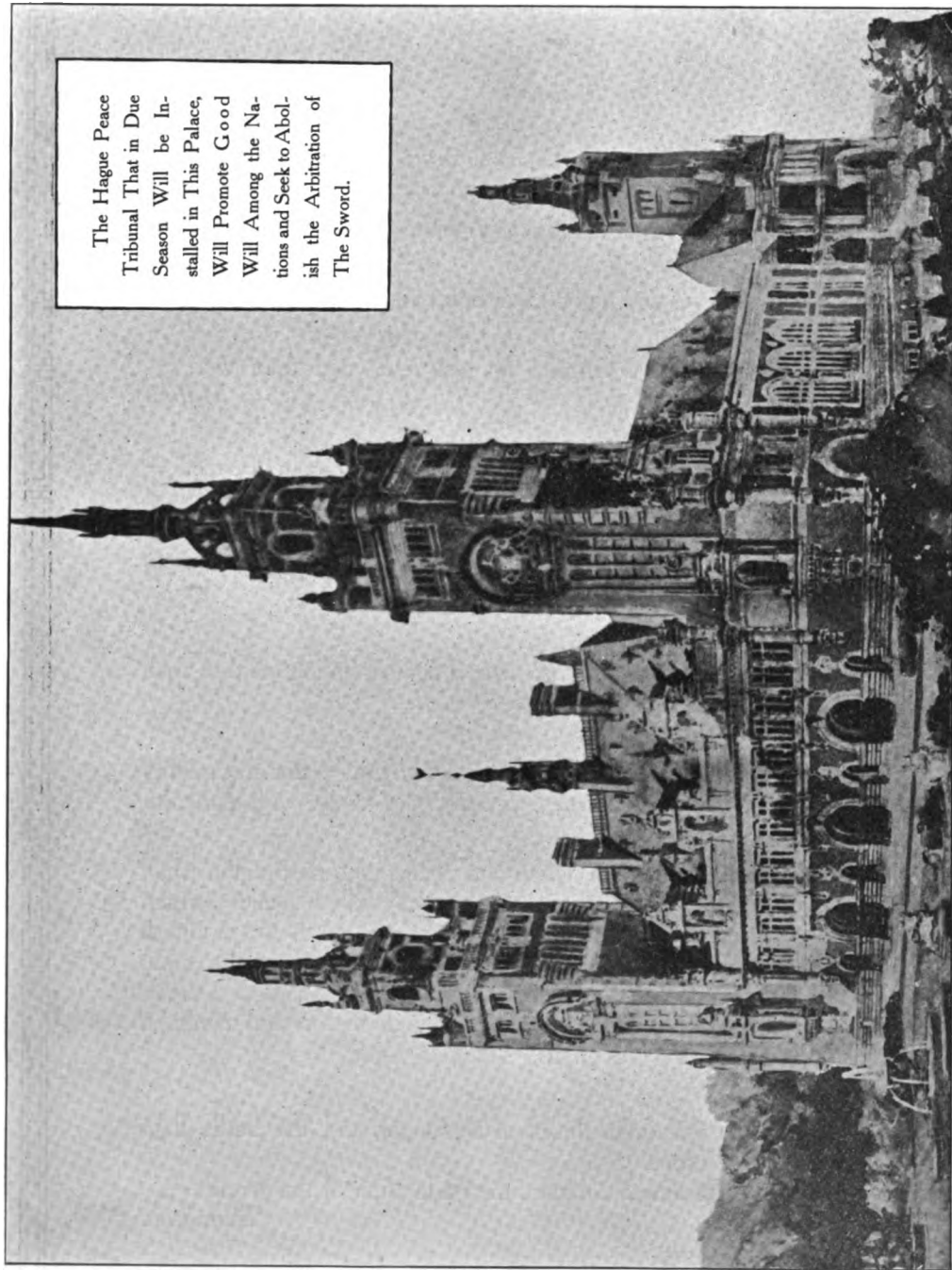


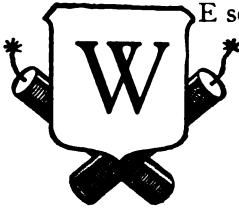
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A Court of Justice for the Nations

BY BURDETT A. RICH



It seems a long way from the savage days when all men fought out their quarrels to the death, neither aided nor restrained by any laws or rules of justice. The first step in civilization was taken when some authority began, however crudely, to determine the controversies of men, in an attempt to do justice between them. All advances of civilization through the centuries must be measured and tested by the extent to which justice has been established. No nation is fit to be called civilized if its government permits private wars among the people, and tribunals of justice are not only established and maintained by government, in every nation that is even called civilized, but are almost unanimously resorted to as a matter of course for the redress of wrongs and grievances. There has thus become established almost a world-wide system of justice by which the rights of individuals are authoritatively determined, and all men, except the criminal classes, resort to the tribunals and accept their decisions as the only method by which their grievances can be redressed. All of this is so common as to seem like part of the order of nature. Yet, it has come by slow development through the centuries, in the gradual growth of the system of law and justice. But this does not yet apply to controversies between nations. The system of justice established by the growth of civilization has been built up only part way. In affairs between nations, despite our so-called international law, there is no law or rule of justice which prevents any nation from making war upon

another for any cause or pretense whatever. As between nations, we have scarcely risen yet above that state of savagery in which men fight and kill each other as their greed or anger impels them.

The demand for peace has been steadily increasing throughout civilized nations, in the present generation, until it seems likely to become irresistible. The enlightenment of the great body of the common people of the different nations has led them to understand the situation, and to realize the appalling consequences of war, especially to themselves. A few centuries ago most of the common people of every nation were too ignorant and unthinking to contribute much to that public opinion which has to-day become an almost invincible power in every country. We are not yet far beyond the period of almost continual wars, great or small, between rival nations, rival claimants of the crown, rival cities, or rival barons, knights, and marauders of every degree. Service in armies of mercenaries was often the most profitable of employments. Now, government by the people, established almost everywhere in the New World, and in some of the nations of the Old World, is powerfully leavening the monarchies also, and fast becoming the rule among the nations. To-day every government in Europe is powerfully affected by public opinion, and public opinion demands peace. Yet the dangers of war are still recognized, and men realize also the appalling possibilities of another war between great nations. Arbitration, and treaties agreeing to arbitrate difficulties, have become common. The disposition of the nations is to avoid war. But there are possibilities that

greed for national gain of some kind, or passion inflamed by some possibly trivial incident, may start a conflagration that cannot be quenched without a terrible war. The spirit or temper of some one or more of the nations might make arbitration impracticable in such a case, though it would have been chosen in calmer moments. There is yet no settled, recognized system or method of settling the disputes that may thus arise between the nations, in an orderly way, in accordance with the principles of justice, instead of resorting to the policy of death and destruction.

The prospect of the establishment of an international tribunal to settle disputes between nations, and place the keystone in the world's yet unfinished arch of justice, is now peculiarly encouraging. Fourteen years ago, when the Bar Association of New York presented to President Cleveland a petition for action toward the establishment of such a tribunal, and English bar associations presented a similar petition to the British government, the smart young men of the press, and many older ones, made many facetious comments about the impracticability of the movement, as if it were only an attempt to bring in the millennium by resolutions. To-day, few, if any, of the multitudes of journalists in this country, speak of it without respect. What has been done in these few years has already taken the question out of the realm of dreams, and made it one of the most momentous living questions of the century. At the second Hague Conference, in 1907, the representatives of well-nigh all important nations of the world discussed at length the proposition to establish a court of arbitral justice. They were not able to agree on all the questions that were involved in the proposition to establish this great court, but did accept in principle the main proposals concerning its organization, jurisdiction, and procedure, and recommended its establishment through diplomatic channels. This, however, would create a court open only to those nations which accepted it by special agreement, and not to all nations. At the same time it adopted an international prize court for cases of capture in time of war. Since that time, Secretary Knox

has proposed to the nations to invest this international prize court with the jurisdiction and functions of a court of arbitral justice for any and all nations consenting thereto. This is to be done by the simple expedient of inserting in the instrument of ratification of the prize court a clause permitting that court and its judges to accept jurisdiction and decide any case of arbitration presented to it by a signatory of that court. This would change the international prize court into a court of arbitral justice,—a single tribunal in war and in peace to decide controversies of any nature. The establishment of this court must obviously give it power to take jurisdiction of such nations only as agree thereto, and of such controversies only as the nations may agree to submit. This would by no means go to the extent of compelling every nation to submit to the jurisdiction of such a court in every controversy, as individuals have to submit to the jurisdiction of the courts of their country. But a tribunal once established and ready to receive the submission of controversies would make a great beginning toward the establishment of law and justice among nations. It is too early to say that the creation of this court is assured. Yet at the Mohonk Conference on International Arbitration a few weeks since, James Brown Scott, solicitor of the State Department, and a delegate to the second Hague Conference, and also one of the greatest American authorities on international law, brought what he declared to be an authorized quotation from Secretary Knox, predicting that the third Hague Conference would find a permanent court of arbitral justice in session at The Hague, and that his proposition was being accepted, at least in principle, by many of the powers. We may well believe, therefore, that the first great international court of justice is soon to be created. As was said in these columns fourteen years ago, in discussing the proposition: "Incomplete and crude as the first provision for a general international tribunal might be, it would mark the boundary between all the past ages of barbarity and lawless warfare between clans, tribes, or nations, and the coming age of peace and civilization."

The Declaration of Independence

What it Meant in 1776, and
What it Means in 1910

BY THE EDITOR

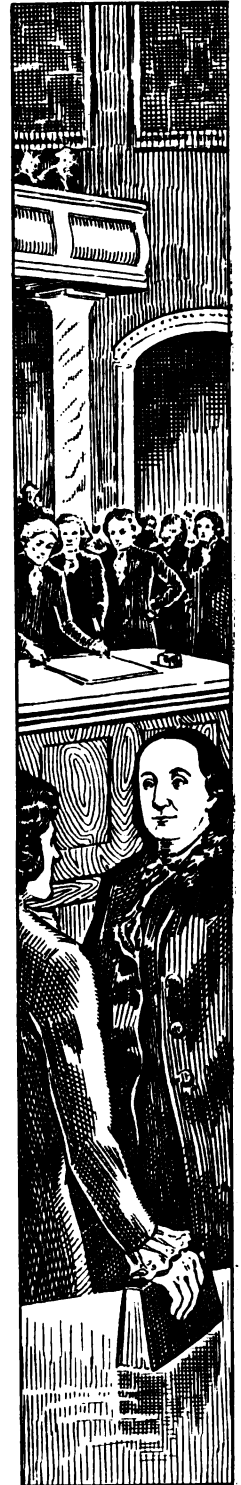
DECORATION BY EDWARD J. DAVIS

THIS great political document—the Magna Charta of American liberty—was largely the work of colonial lawyers. It was written by Thomas Jefferson, a lawyer. Nearly half the names appended to it are those of lawyers. Lawyers such as John Adams, Thomas M’Kean, Charles Carroll, Francis Hopkinson, and George Wythe defended its principles in debate, and lawyers such as Alexander Hamilton, John Marshall, and James Monroe defended it on the battlefield.

No class of our citizens has exhibited greater patriotism than the members of the legal profession. In all our wars a large percentage of the officers of our volunteer armies have been lawyers. At the period of the Revolution the members of the bar might well have hesitated to antagonize the strong Tory interests, and to hazard life and fortune upon the dubious outcome of a desperate revolt. But, to their honor be it said, they did not shirk the responsibility of leadership. They were foremost in council and in the field. They realized that the Declaration of Independence, unless maintained by the unflinching heroism of the Continental battle line, would be, at least, vain glorious words idly written on parchment; at most, an act of high treason.

To ascertain the meaning of this great state paper, we must consider the purpose for which it was written and the class of men by whom it was promulgated.

It was clearly not in the nature of a declaration of war. Hostilities had been in progress for over a year. The battle of Bunker Hill had been fought. Boston had been taken, and the ill-fated Montgomery had unsuccessfully stormed Quebec.



Double Purpose of Declaration.

The declaration was evidently designed to serve a double purpose. On the one hand it was a solemn act by virtue of which the colonies took a separate and equal station among the nations of the earth. It gave point and purpose to the struggle on which they had entered. It marked the goal to be attained. On the other hand, it was an elaborate justification of the separation to which the colonies felt impelled. This was its primary feature.

We may pass by the vivid recital of the repeated injuries and usurpations which had been inflicted upon the American states. These cogent reasons for a separation were presented to the world, to use the language of Webster, "in such manner as to engage its sympathy, to command its respect, and to attract its admiration;" but they were important only as justifying the action of the colonies in the eyes of civilized nations. The grievances recited have long since passed away. The enduring part of the Declaration is that portion which asserts the right of a people to overthrow any government which has become incompetent to fulfil its purpose, or is destructive to the essential ends for which it was instituted. This right the signers of the instrument deemed to be sanctioned by the principle of self-preservation, and by the self-evident truths "that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness."

Doctrine of Equality and Inalienable Rights.

These views, at the time they were adopted by the Continental Congress, were familiar doctrine. They had long figured prominently in pamphlets, resolutions, and declarations. More than a century before they had inspired the English revolutionists. Through the writings of John Locke they had been incorporated into the body of Anglo-Saxon thought. The idea that men were born free, equal, and independent, and in possession of certain inherent and inalienable rights, had become a universal assumption. In the New World it became the vital spirit of

government. In France it sent the noblesse of the old regime to the guillotine.

The Signers of the Declaration.

The men who promulgated the Declaration of Independence were not sanguinary *sans-culottes*, armed with pikes and breathing threatenings and slaughter. They spoke of Liberty and Equality, it is true, but not of Fraternity. They were be-laced colonial gentlemen wearing velvet coats, satin embroidered waistcoats, and silk stockings, and had powdered hair and queues. Among them were wealthy merchants and planters, famous soldiers, lawyers, and physicians. They belonged distinctively to the better classes. They severed with profound regret the ties which bound them to the mother country.

What They Meant by Equality.

What did these men mean when they spoke of equality?

Their broad assertion of the equality of men and their right to Life, Liberty and Happiness, suggests Mr. W. F. Dana, was evidently but a part of the argument by which they upheld the right of revolution. They were solicitously attempting to justify their conduct before the world. To do this it was necessary to deny the divine right of Kings. For this purpose they adopted the reasoning of Locke. They affirmed this equality only with respect to the laws of nature, which each man was entitled to enforce until he became a member of society. They argued that thereafter this right of enforcement was vested by the consent of the individual in the government, which derived its powers directly from men who might, when occasion demanded, alter or abolish the government which their consent had created. The future form of government which the colonies might adopt, or the possible equality of persons under it, was not then a matter for consideration.

John Locke, who is the best interpreter of the political views current a century ago, says in his *Second Treatise*, § 54: "Though I have said above, 'that all men by nature are equal,' I cannot be supposed to understand all sorts of equality.

Age or virtue may give man a just precedence. Excellency of parts and merits may place others above the common level. Birth may subject some, and alliance or benefits others, to pay an observance to those to whom nature, gratitude, or other respects may have made it due." The men of 1776 were disciples of Locke. They would go no further than this.

What the Declaration Meant in 1776.

"When they gave the Declaration to the world," says Mr. Dana, "they gave it as the pledge of their faith, and meant by it, not the propaganda of anarchy, or the demolition of civil society, but the foundation of government upon the basis of law and justice, with freedom as broad and full as the dictates of prudence and sagacity suggested, or was compatible with the sovereign principle, never to be overlooked, that that government is best which, not in purpose only, but in fact, brings the greatest good to the greatest number." And this would seem to be all that the Declaration of Independence can ever mean.

Had the framers of the Declaration been called upon to define those entitled to the inalienable rights which they asserted, they would unhesitatingly have described them as English freemen. They had chattel slaves at home whom they had no intention of manumitting or of meeting upon terms of social equality. They expected, and would have strenuously insisted upon, the respect due to their station.

Had it been proposed to that august assemblage that the phrases of the Declaration be taken at their face value, they would doubtless have answered somewhat after the manner of Josiah Quincy, of Massachusetts, who, thirty-five years later, in discussing the bill for the admission of Louisiana, said: "This Constitution was never constructed to form a covering for the inhabitants of the Missouri and the Red River country, and whenever it is attempted to stretch it over these it will be rent asunder. . . .

It was not for these men that our fathers fought. You have no authority to throw the rights and liberties and property of this people into the hotch-pot with the wild men of the Missouri, nor with the mixed though more respectable race

of Anglo-Hispano-Gallo-Americans who bask on the sands at the mouth of the Mississippi."

The ample terms of the preamble of the Declaration, when it came time for them to be practically construed, were decided not to be broad enough to cover either the black man or the red, and numerous limitations and restrictions were even imposed upon men of Caucasian descent. So little did the Declaration contemplate future governmental forms that there is nothing in it that would guarantee a republic, or even a representative form of government.

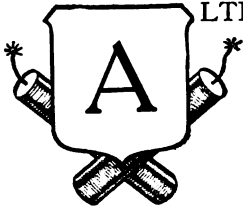
It is apparent that anyone who relies upon the "glittering generalities" of the Declaration of Independence to justify a crusade against alleged political, social, or economic inequalities existing under our form of government attributes to them a scope and force far beyond that which the signers of the instrument intended.

What the Declaration Means in 1910.

As time passes we are content to give the preamble of the Declaration a broader interpretation. It means more in 1910 than ever before. The black man has been given citizenship, the red man lingers as a ward of the Nation, but his enfranchisement may not be far away. Woman suffrage has been established in several of the states, and is being vigorously demanded in others. Our liberal immigration laws have drawn to us representatives of every nation, and they have been assimilated into our social fabric. We have extended the fundamental rights of Life, Liberty and the pursuit of Happiness to include ever-widening territories and distant isles. "They have," in the words of a recent writer, "become completely incorporated into our political structure and our political ideas, and no amendment or change of government could effectually deprive us of them. The Anglo-Saxon never abandons a political right for which he has fought and bled. One by one he has incorporated into the body of his political ideas these rights and privileges which have in turn become inalienable. The Bill of Rights has grown in length, not diminished; it has been increased in application, not restricted."

Right of Action for Injuries Due to the Explosion of Fireworks

BY WALTER M. GLASS



ALTHOUGH the city fathers are everywhere attempting to secure a safe and sane Fourth of July, and many of the dangers of past years have been prevented by the partial prohibition of the sale and use of the treacherous toy pistol and of fireworks containing the more powerful explosives, yet it is not to be hoped that all the dangers have been eliminated. Fireworks are ever dangerous and unreliable, and the small boy, more or less grown up, will still be careless in his handling of them, with injury to himself or to others. This carelessness, so far as it involves injuries to others, is negligence in the view of the law; and a review of the more important principles applicable to cases of injuries due to explosion of fireworks may not be out of place at this time.

The majority of the decisions dealing with this question involve injuries resulting from elaborate displays or exhibitions, rather than those resulting from the acts of persons discharging fireworks in a private way. The liability, if any, is not modified by the fact that the negligent person is engaged in a patriotic celebration, rather than in some purely personal exhibition,—such as the celebration of a political victory,—the same principles governing both classes. The cases naturally fall into three groups: First, those involving the liability of a municipal corporation which expressly permits or impliedly consents to the display; second, those involving the liability of the person or persons responsible for the display or actively engaged in the discharge of the fireworks; and, third, the cases involving the responsibility of persons watching the display.

Liability of Municipal Corporation.

It has been frequently decided that the mere failure of the city to prevent the explosion of fireworks on the streets does not render it liable for injuries resulting therefrom, although the police and other officers may know that the exhibition is taking place or is about to take place¹, or consent thereto², or even take part therein³. Nor is a municipal corporation liable for the negligence of a police officer who stands by and permits the firing of a cannon in the street⁴.

These decisions rest upon the well-established doctrine that a municipal corporation is not liable for the negligence of its police or other officers in the performance of those duties which are purely public or governmental in character, and in discharge of which they are considered not agents of the municipal corporation, but of the state.

A city is not liable for the negligence of its officers in the management of fireworks undertaken by them without lawful authority⁵. And the fact that the city has expressly given permission for the exhibition will not render it liable⁶. And it has been held that a city is not liable

¹*Arms v. Knoxville*, 32 Ill. App. 604; *O'Rourke v. Sioux Falls*, 4 S. D. 47, 46 Am. St. Rep. 760, 54 N. W. 1044, 19 L.R.A. 789; *Boyland v. New York*, 1 Sandf. 27; *Robinson v. Greenville*, 42 Ohio St. 625, 51 Am. Rep. 857.

²*Bartlett v. Clarksburg*, 45 W. Va. 393, 72 Am. St. Rep. 817, 31 S. E. 918, 43 L.R.A. 295.

³*Ball v. Woodbine*, 61 Iowa, 83, 47 Am. Rep. 805, 15 N. W. 846; *Morrison v. Lawrence*, 98 Mass. 219.

⁴*Norristown v. Fitzpatrick*, 94 Pa. 121, 39 Am. Rep. 771.

⁵*Love v. Raleigh*, 116 N. C. 296, 21 S. E. 503, 28 L.R.A. 192; *Tindley v. Salem*, 137 Mass. 171, 50 Am. Rep. 289.

⁶*Fifield v. Phoenix*, 4 Ariz. 283, 36 Pac. 916, 24 L.R.A. 430; *Lincoln v. Boston*, 148 Mass. 579, 12 Am. St. Rep. 601, 20 N. E. 329, 3 L.R.A. 257.

for injuries resulting from an explosion of fireworks during a time in which an ordinance forbidding such explosion had been suspended by the board of aldermen⁷. So, a municipal corporation is not liable for the negligence of one giving a fireworks exhibition in a public park, under a license from the city⁸. But while the display of fireworks upon a street may not be a nuisance as matter of law, it may be such as a matter of fact; and if the display is found by the jury to be a nuisance as a matter of fact, and the display was given under a permit from the city, the latter will be liable⁹.

The mere assemblage of a vast concourse of people to witness, or even to participate in, the illegal firing of a cannon upon the street, is not a public nuisance for which a municipal corporation is liable¹⁰.

Nor does the assemblage of a large number of people engaged in the unlawful explosion of powder in anvils in the public streets constitute a defect in the street for which the municipal corporation is liable¹¹. And the firing of a cannon upon premises outside the limits of a highway, although it may amount to a public nuisance, is not a defect in the highway¹². Nor is an assemblage of people in the street on the Fourth of July, exploding firecrackers, without any common purpose to injure anyone, a mob within the meaning of a statute making the city liable for injuries done by mobs or riots¹³.

Liability of Person Discharging Fireworks.

As to the liability of those engaged in

⁷Hill v. Charlotte, 72 N. C. 55, 21 Am. Rep. 451.

⁸De Agramonte v. Mt. Vernon, 112 App. Div. 291, 98 N. Y. Supp. 454.

⁹Speir v. Brooklyn, 139 N. Y. 6, 36 Am. St. Rep. 664, 34 N. E. 727, 21 L.R.A. 641; Landau v. New York, 180 N. Y. 48, 105 Am. St. Rep. 709, 72 N. E. 631; Melker v. New York, 190 N. Y. 481, 83 N. E. 565, 13 A. & E. Ann. Cas. 544, 16 L.R.A.(N.S.) 621; Walker v. New York, 107 App. Div. 351, 95 N. Y. Supp. 121.

¹⁰Robinson v. Greenville, 42 Ohio St. 625, 51 Am. Rep. 857.

¹¹Campbell v. Montgomery, 53 Ala. 527, 25 Am. Rep. 656.

¹²Lincoln v. Boston, 148 Mass. 578, 12 Am. St. Rep. 601, 20 N. E. 329, 3 L.R.A. 257.

¹³Aron v. Wausau, 98 Wis. 592, 74 N. W. 354, 40 L.R.A. 733.

the discharge of fireworks for their negligence, it is unnecessary to cite authorities for the proposition that one who wantonly or maliciously injures another by the explosion of fireworks will be held liable therefor.

Persons discharging fireworks are bound to exercise great care¹⁴; and mere negligence is sufficient to create a liability for injuries which are the proximate result thereof¹⁵. A person is not relieved from liability for his carelessness in pointing a loaded cannon at people passing on the street, merely because he did not intend to shoot them¹⁶. And boys thirteen or fourteen years old are liable for any actual damages caused by their negligence in exploding fireworks¹⁷.

It is not negligence *per se* to discharge fireworks at suitable places, as on one's own premises¹⁸; or from a court-house, in the center of the public square¹⁹; or in a public park²⁰. But the discharge of fireworks in a public street is a nuisance *per se*, so that all concerned in the commission of the nuisance are liable for any damage occasioned²¹. And it is negligence *per se* to leave bombs and other explosive fireworks where children can pick them up²².

A fireworks company is liable for the negligence of its agents sent by the company to give an exhibition, where they have full charge of it²³.

¹⁴Dowell v. Guthrie, 99 Mo. 653, 17 Am. St. Rep. 598, 12 S. W. 900.

¹⁵Consolidated Fireworks Co. v. Koehl, 103 Ill. App. 152; Combs v. Thompson, 68 Kan. 277, 74 Pac. 1127; Bradley v. Andrews, 51 Vt. 530.

¹⁶Combs v. Thompson, 68 Kan. 277, 74 Pac. 1127.

¹⁷Conklin v. Thompson, 29 Barb. 218; Bradley v. Andrews, 51 Vt. 530.

¹⁸Bianki v. Greater American Exposition, 3 Neb. (Unof.) 656, 92 N. W. 615.

¹⁹Dowell v. Guthrie, 99 Mo. 653, 17 Am. St. Rep. 598, 12 S. W. 900.

²⁰Crowley v. Rochester Fireworks Co. 183 N. Y. 353, 76 N. E. 470, 5 A. & E. Ann. Cas. 538, 3 L.R.A.(N.S.) 330; De Agramonte v. Mt. Vernon, 112 App. Div. 291, 98 N. Y. Supp. 454.

²¹Cameron v. Heister, 22 Ohio L. J. 384; Jenne v. Sutton, 43 N. J. L. 257, 39 Am. Rep. 578.

²²Bianki v. Greater American Exposition Co. 3 Neb. (Unof.) 656, 92 N. W. 615; Wells v. Gallagher, 144 Ala. 363, 113 Am. St. Rep. 50, 39 So. 747, 3 L.R.A.(N.S.) 759.

²³Consolidated Fireworks Co. v. Koehl, 206

But the rule is different where a purchaser merely requests the manufacturer to send a man to assist him in discharging the fireworks, and the man acts under the orders of the purchaser²⁴; and a manufacturer or dealer in fireworks is not liable for an injury resulting from the negligence or improper use of them by the purchaser or a third person²⁵. It is negligence on the part of a fireworks company to so manufacture its bombs that they will fail to explode when high in the air, and to fire and propel such bombs into the air at such an angle that they will fall outside the grounds where the exhibition is being given²⁶.

The granting of permission that fireworks may be discharged on his premises does not render the owner liable for injuries to one who complains only of their quality and the manner in which they are handled²⁷. But the owner of a private park, who invites the public to it for the purpose of looking on at an exhibition of fireworks, is not relieved from all responsibility for the safety of his guests by reason of the fact that the exhibition is to be given not by himself, but by an in-

dependent contractor. He is bound to use reasonable care to provide them with a safe place from which to view the exhibition, and he is further bound, in making his contract, to use care to select a skilful and competent person to give the exhibition²⁸.

Ordinarily the question whether the party discharging the fireworks has exercised a sufficient degree of care is a question for the jury²⁹.

Contributory Negligence.

Whether one assisting in the celebration is guilty of contributory negligence is also a question for the jury³⁰. It is not contributory negligence, as a matter of law, for one to stand in a crowd on a street and watch a display of fireworks³¹.

But if there is no negligence in the handling or the exploding of the fireworks, a spectator must be deemed to have taken the risk of any injury³²; as, for instance, where a spectator's horse is frightened and runs away³³.

Ill. 283, 68 N. E. 1077; *Colvin v. Peabody*, 155 Mass. 104, 29 N. E. 59; *Deyo v. Kingston Consol. R. Co.* 94 App. Div. 578, 88 N. Y. Supp. 487.

²⁴*Wyllie v. Palmer*, 137 N. Y. 248, 19 L.R.A. 285, 33 N. E. 381.

²⁵*Ibid.*

²⁶*Bianki v. Greater American Exposition Co.* 3 Neb. (Unof.) 656, 92 N. W. 615.

²⁷*Waixel v. Harrison*, 37 Ill. App. 323.

²⁸*Sebeck v. Plattdeutsche Volksfest Verein*, 64 N. J. L. 624, 81 Am. St. Rep. 512, 46 Atl. 631, 50 L.R.A. 199.

²⁹*Sebeck v. Plattdeutsche Volksfest Verein*, 59 C. C. A. 531, 124 Fed. 11; *Crowley v. Rochester Fireworks Co.* 183 N. Y. 353, 76 N. E. 470, 5 A. & E. Ann. Cas. 538, 3 L.R.A. (N.S.) 330; *Colvin v. Peabody*, 155 Mass. 104, 29 N. E. 59; *Dowell v. Guthrie*, 99 Mo. 653, 17 Am. St. Rep. 598, 12 S. W. 900.

³⁰*Fisk v. Wait*, 104 Mass. 71.

³¹*Colvin v. Peabody*, 155 Mass. 104, 29 N. E. 59; *Dowell v. Guthrie*, supra; *Bradley v. Andrews*, 51 Vt. 530; *Mullins v. Blaise*, 37 La. Ann. 92.

³²*Scanlon v. Wedger*, 156 Mass. 462, 31 N. E. 642, 16 L.R.A. 395.

³³*Frost v. Josselyn*, 180 Mass. 389, 62 N. E. 469.

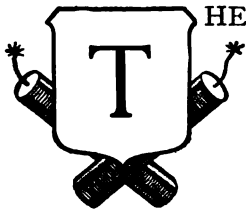
It must not be equality and justice in the written law only, but equality and justice in the law's administration, alike afforded in every part of the Republic, and literally secured to every citizen thereof.—William McKinley.

Speech at Ironton, Ohio, Oct. 1, 1885.

Art in Direct Examination

BY FRANCIS L. WELLMAN

Being the latter part of Chapter X from his remarkable book, entitled "Day in Court" or "The Subtle Arts of Great Advocates," copyright 1910, by the MacMillan Company, New York, and reprinted in CASE AND COMMENT by special permission of the author. The earlier part of the chapter appeared in the June number.



THE most elementary rule of evidence in connection with the examination - in - chief is that leading questions shall not be put to your own witness (a leading question being such a one as suggests the answer). It is often excessively difficult to adhere strictly to this rule. It is properly applicable only to such questions as relate to the matter at issue, although it is commonly thought to refer to all questions that suggest the answer. If it were rigidly enforced, trials would be ridiculously prolonged, and it is the practice of all experienced trial judges to allow lawyers to put leading questions almost entirely until the real issue in the case is reached. One no longer says, "What is your name?" "Where do you live?" But, "Mr. Brown, I understand you live at No. 6 Madison avenue, and are in the real estate business, with offices at 125 Broadway?" and so on. Thus, by quick stages, we come to the more important part of the case.

Not long ago I was employing this method of leading a witness quickly to the real issues in a case, in a trial conducted before a Supreme Court Judge, quite fifteen years my junior, when he stopped me by a rather peremptory direction not to lead my witness. I was taken quite aback by his tone, and meekly remarked that I feared I did not quite know what a leading question was. To

this the judge replied, superciliously, "A leading question, Mr. Wellman, is one that suggests the answer." The learned justice had remembered this much from his law-school days, but had forgotten, if he ever knew, that the rule against leading questions applies only to matters material to the issue, and not to such preliminary inquiries.

I was placed in a most humiliating position before the jurors by this youthful rebuke, but made no attempt at an effective retort. I was reminded, however, of a rejoinder that Curran once made to an English judge who expostulated at the proposition of law Curran was arguing before him, and exclaimed, "If that is the law, Mr. Curran, I may burn my law books," to which Curran tartly replied, "Better read them, my lord."

One also recalls the retort made by a leader of the Boston bar (a man distinguished for his learning) to the presiding judge of a full bench, who had stopped him in his argument with the brusque remark: "That is not the law, counselor." With fine suavity of manner the counsel replied: "I beg your honor's pardon, it was the law before your honor spoke."

Perhaps, however, my own method of making no real reply, but accepting the rebuke, was the wiser course to pursue, as I am a believer in the wisdom and propriety of showing the greatest courtesy toward the bench; and then one never can forget the story of the man who told his neighbors in great excitement, about how his dog would go out each night and bark and bark at the moon, and

when asked, "And then what happened?" he replied, "Oh, nothing, nothing at all; the moon went right on just as it always had."

On another occasion a judge from one of the up-state circuits of our Federal courts nearly adjudged me in contempt of court, because I started out with all my witnesses by leading questions when interrogating them about their residence, their occupation, and how they happened to come from other cities to testify in our courts, etc.

The learned justice nearly broke the learned bench, so hard did he pound it with his gavel as he ordered me to sit down and desist from such a practice,—a practice which in no wise injures the cause of truth, but saves an immense amount of time otherwise wasted.

Had I been arraigned for contempt upon this occasion (and it was but a few years ago), I should long to have been represented by some one resembling Mr. John Clark, afterward the distinguished Lord Eldon, who was remarkable when at the English bar for the *sang froid* with which he treated the judges.

On one occasion a junior counselor, on hearing their lordships give judgment against his client, exclaimed that he was surprised at such a decision. This was construed into a contempt of court, and he was ordered to attend at the bar next morning. Fearful of the consequence he consulted his friend John Clark, who told him to be perfectly at ease, for he would apologize for him in a way that would prevent any unpleasant result. Accordingly, when the name of the delinquent was called, John Clark arose, and thus addressed the assembled tribunal: "I am very sorry, my lords, that my young friend has so far forgotten himself as to treat your honorable bench with disrespect; he is extremely penitent, and you will kindly ascribe his unintentional insult to his ignorance. You must see at once that it did originate in ignorance, for he said he was 'surprised' at the decision of your lordships; now, if he had not been very ignorant of what takes place in this court everyday, had he known you but half so long as I have done, he would not be surprised at anything you did."

When, however, the main issues of the case are reached, the rule against leading questions (with few exceptions) is strictly adhered to, and very properly so.

Some lawyers put the clearly inadmissible question which suggests the answer, and though it is ruled out, perhaps with a rebuke from the court, the witness, nevertheless, has caught the idea. This is disreputable practice.

There are, however, several legitimate ways of assisting the witness's defective memory. One method is to ask him to repeat the whole story over again. Perhaps his second recital contains the part he omitted at the first, but makes some new omissions, and thus is secured the testimony wanted, but at the same time the witness is proved to be a man of poor memory.

A better way is to so frame the question that it shall contain a part of the forgotten sentence, but otherwise applied, as, for example, by referring to some collateral circumstance which would recall the forgotten phrase. This can be legitimately done if the advocate is quick-witted enough, and thereby readily save the situation.

Every advocate is in honor bound not to transgress the rule against "leading questions" when it really comes to important matters, but it is sometimes extremely difficult. Indeed, there are cases in which the court, in its discretion, may permit him to ask leading questions in the interests of justice, so that important testimony may not be lost. Suppose, for instance, a witness is giving his memory of a long conversation he overheard between the parties to an action, and, as often happens, leaves out of his narrative, perhaps, what, in law, amounts to the most important part.

In vain the advocate tries not to lead him. He asks, "Have you given all the conversation?" "Was that all that was said?" The witness remembers no more. The memory of the witness has been exhausted by direct questions, and then the court may properly permit him to lead the witness so far as to ask the witness whether anything was said about so and so (without suggesting what was said), and thus call his attention to the matter

which the witness has inadvertently overlooked, and thus save very important testimony which would otherwise be lost.

So too, when it is discovered that a witness is hostile, the court, as already intimated, may permit leading questions to be put, because the reason for the rule against them no longer exists.

In other words, the rule against putting leading questions to your own witness is based upon the tendency of the human mind to adopt the suggestion of the person or side that it desires to aid, and to quickly respond to any hint of what is wanted to assist the party making the suggestion. Hence, in the case of a hostile witness, obviously the reason for the rule is gone.

Suggestibility of Witnesses.

In a former chapter I drew attention to some of Hugo Munsterberg's experiments with his psychology classes at Harvard, to ascertain their powers of perception and observation. Because of the significance of his experiments and the important light they throw upon this subject, I desire to make further reference to them in connection with this rule against leading questions and against making suggestions to your own witnesses. In his "Essays on Psychology and Crime" he cites many cases of patients who have come under his hypnotic influence, and whom he has attempted to control after they had left his presence by post-hypnotic suggestion. He states, in substance, that it is the consensus of opinion among the leading psychologists of the day that it is not possible for a lawyer to exert an effective hypnotic influence over any witness he may be examining for the first time in court, and that the "hypnotic eye," in such connection, is largely an absurd invention of the imagination of the novelist.

"There is no such thing as hypnotism by a mere glance or unless the party hypnotized resigns himself voluntarily to the influence, and this process must be gone through with many times before anything like control of the subject is possible; there is no fear that it can be brought about suddenly; it needs persistent influence, and works probably only upon neurotic persons."

Of course, effective hypnotic influence could never take place in a court room, but something very similar takes place with most people whose minds are under a great mental or nervous strain; for example, in a panic the minds of all men are especially open to any suggestion. Professor Munsterberg further points out that the nerves controlling the thought passages to the switch board or central stations of the brain seem to turn off all opposite currents in their automatic action. For example: A suggestion to open the hand expels all idea of clenching it; so a false suggestion to one in a normal state of mind is repelled by many other forces, such as a faithful memory, a sound reason, conscience, and judgment. But in a state of any considerable mental excitement, these opposing forces are weakened, and the false suggestion, now more feebly combated, takes better hold. Emotion certainly increases the susceptibility of everybody to suggestions; so does fatigue and nervous exhaustion.

The court room is surely a place of great mental excitement. There is also the nervous desire of the witness to help the side calling him, and anxiety to become an important factor in the case. In this state of mind leading or suggestive questions, either on the direct or cross-examination, are readily accepted and bear fruit. Hence the wisdom of the rule against leading questions on direct examination.

The psychologist does not need the hypnotic state to demonstrate experimentally how every suggestion may contaminate even the most trustworthy memory. This is well illustrated by another experiment which Professor Munsterberg made with a class of about forty children and adults. They were shown a colored photograph representing the interior of a room in a farmhouse.

The photograph was examined individually by each member of the class, with instructions that they were to take special notice of every thing that was in the room. The picture was then turned face downward. The class was asked to hand in their written reports of what they had observed.

The picture had plenty of detail; the

direct questions were simple: "How many persons are in the room?" "Does the room have windows?" "What is the man doing?" There were persons and windows, and the man was eating soup. But after the direct questions were put, the first leading and suggestive question brought 59 per cent of failure.

For example: The leading question was put to each member of the class, "Did you notice the stove in the room?" (there was no stove there), and 59 per cent of the class answered "Yes," and, having once admitted seeing the stove, they proceeded to locate it, and tell in what part of the room it was.

The walls of the room were painted red. The students, however, were asked whether the walls were green or blue, and this suggestive question seemed to eliminate the red color of the hall from 50 per cent of the minds.

I quote from one of Professor Munsterberg's articles: "No doubt the whole situation of the court room re-enforces the suggestibility of every witness. In much-discussed cases current rumors, and especially the newspapers, have their full share in distorting the real recollections. Everything becomes unintentionally shaped and molded. The imaginative idea which fits a prejudice, a theory, a suspicion, meets at first the opposition of memory, but shortly it wins in power, and as soon as the suggestibility is exercised, the play of ideas, under equal conditions, ends, and the opposing idea is annihilated. Easy test could quickly unveil this changed frame of mind, and, if such a half-hypnotic state of suggestibility had set in, it is no wiser to keep the witness on the stand than if he had emptied a bottle of whisky in the meantime."

The whole purpose of Professor Munsterberg's essays is, as he says, "to draw the attention of serious men to an absolutely neglected field which demands their full attention."

In time psychology may be able to serve as the handmaiden of justice, but in the meantime there are many practical difficulties to overcome, and it is an intensely interesting and remarkable fact that the jurists have anticipated the researches of psychology. In reviewing

the essays of Professor Munsterberg, Chief Justice Simeon E. Baldwin, of Connecticut, says: "The effect of suggestion on a witness is spoken of as something to be understood and explained only by a professed psychologist. The rule of all Anglo-American courts, which excludes question naturally leading to a desired answer as to a material fact, shows how well jurists have appreciated this particular tendency of the human mind."

One of the most remarkable cases of suggestive evidence, akin to hypnotism, came under my own observation some years ago when I was defending one of the nurses of the Mills Training School,—a most estimable young man,—who had been indicted for deliberately choking to death a patient in the insane ward at Bellevue Hospital.

A reporter of the Journal had made a contract with his newspaper for \$150 to feign insanity, and get himself committed to the insane ward at Bellevue Hospital, for the purpose of writing an article upon the treatment of the insane, for publication in the Journal. During his first night in the hospital one of its patients died, and the reporter conceived the idea of weaving around this occurrence a tragic (though false) story of the abuse of the insane, resulting in death. In his article he claimed to have seen two trained nurses (one of whom was this young man) strangle this patient to death, because he would not eat his supper.

He graphically described how these nurses had wound a towel around the insane man's throat and had twisted it until the patient was strangled to death.

Newspaper pictures occupying a full page of the Journal were published, purporting to show all the details of the alleged process, in vogue at the hospital, of strangulation by means of a towel.

The indictment of this young man for murder followed the Journal exposure of these alleged hospital abuses.

The whole community was wrought up to a high pitch of excitement.

At the trial the perjury-lying reporter, as a witness for the prosecution, told the same story, but was so thoroughly discredited and brought to bay on the second

day of his lengthy cross-examination that he fled the town, writing from Philadelphia to his mother in this city that he dare not ever return to New York.

This fact, however, could not be communicated to the jury during the trial, still unfinished, and the greatest difficulty to overcome was the fact that three insane patients were brought from the same hospital by the assistant district attorney, and called as witnesses, and, being found by the court to have sufficient intelligence, were allowed to testify to all the alleged details of the murder as they themselves had witnessed it.

All three of these insane patients had seen and studied the pictures and descriptions published in the *Journal*, and these pictorial reproductions of occurrences alleged to have taken place in their own wards at the asylum had served as such vivid, though false, suggestions to their diseased minds (already naturally antagonistic to their keepers and nurses) that they afterwards honestly believed, and felt warranted in taking an oath, that they themselves had actually witnessed these very occurrences that had also been sworn to by the reporter.

These three witnesses—as many people suffering from certain forms of insanity are quite capable of doing—gave their testimony in the most remarkably graphic and convincing manner, and it made such a profound impression upon the court and jury, and the prosecution was so bitter and determined, that it seemed almost impossible to prevent the conviction of my client.

The jurors, however, having been carefully chosen by both sides from a "special panel," were unusually intelligent and competent to carefully weigh the false, though honest, testimony of these three witnesses against certain scientific and medical testimony offered in behalf of the defense which conclusively showed that the deceased could not have been strangled to death; and this very long trial ended in a prompt acquittal of the defendant.

This case is a striking illustration of the dangerous effect of leading and false suggestions upon minds susceptible of such influences, and in this instance came very near resulting in the conviction, and

possible execution, of an entirely innocent and very worthy young man.

The case was also unique in that it is believed that never before in this country has there been called in any one case such a large number of the most distinguished pathologists and surgeons,—including the late Dr. William T. Bull,—who by their testimony conclusively established the incontrovertible scientific and medical facts upon which the defense was chiefly based. Indeed, taken all together, it was one of the most remarkable trials of recent years, but the newspapers, being in a sense themselves on trial, published practically nothing about it.

Let Well Enough Alone.

A very common fault to be observed almost every day in our courts upon direct examination is that of pressing the witness too far. Counsel become so enamoured with a favorable answer that they seem to want to hear it again and again. It is a pretty good rule to remember to "let well enough alone."

Harris gives an interesting example of this rule. A junior counsel was conducting a case before Mr. Justice Hawkins. The fact seemed pretty clear upon the bare statement of the prosecution. "Are you quite sure of this fact?" "Yes," said the witness. "Quite?" inquired the counsel. "Quite," said the witness. "You have no doubt?" persisted the counsel, thinking that he was making assurance doubly sure. "Well," said the witness, "I haven't much doubt, because I asked my wife." Mr. Justice Hawkins: "You asked your wife in order to be sure in your own mind?" "Quite so, my lord." "Then you had some doubt before?" "Well, I may have had a little, my lord." This ended the case, because the whole question turned upon the absolute certainty of the witness's mind.

Improper Questions.

If an adversary is examining-in-chief, an advocate should be ever on the watch for improper questions. I do not refer to leading questions alone, but to those vastly more numerous ones that violate some rule of evidence.

If one observes a skilful and rather un-

fair examiner handle his witnesses when opposed only by some beginner, it is amazing what an amount of inadmissible testimony he adroitly imports into the case, owing to the fact that his opponent is unfamiliar with the rules of evidence; whereas to an experienced advocate the rules of evidence become so familiar that a question that violates one of them is as quickly discerned by him as a discord would be by a trained musician.

The following criminal case, reported by Harris, serves as an excellent example of the folly of intrusting the examination-in-chief to inexperienced hands.

The prisoner had committed an atrocious murder, and the main evidence against him was the dying declarations of his victim,—his wife. It is a well-known rule of evidence that any dying declaration made in the absence of the prisoner can only be received in evidence after independent proof that the declaration was made with the full consciousness and expectation of approaching death.

The doctor who attended the wife was called as a witness to prepare the way for the dying declaration, which, if allowed in evidence, would undoubtedly have hanged the prisoner.

The young prosecuting attorney asked, "Did she fear death?" "No," said the doctor. The lawyer stared in astonishment at the witness, who was perfectly cool, as most doctors are in the witness box, and who made no effort to assist the district attorney. The ingenious young counselor, however, repeated the question. "Did she fear death?" Answer: "Oh dear no, not at all." The judge: "You cannot put the statement in evidence; the witness may step down;" then turning to the jury, "and you, gentlemen, cannot find a verdict of guilty."

The blank look on the face of the counsel, the sagacious smile of the judge, who evidently thought the right question would be put next, the quick perceptive glance of the witness who stood leaning on the witness box with his hands carelessly folded,—all this is graphically described by Harris, who was present.

The answer of the doctor was true so far as it went, for the woman did not

fear death, but it was also true that she was conscious of approaching death, and, if this had been brought out by the proper question, the dying declaration could have been made admissible.

Objections to Evidence.

One of the most pernicious habits in a trial is that of making constant objections to evidence on trivial matters. It is a very common fault among young advocates. The lawyer who is constantly shouting out "we object," "we object," without solid ground for his objection, is in reality losing his case as fast as he possibly can, as well as befogging and delaying the trial and annoying the presiding judge.

The objecting and objectionable young lawyer imagines he is displaying his knowledge of evidence and proving himself smart. The jury, on the other hand, only get the idea that there must be some very damaging evidence which he is trying to keep from their ears, and as the truth is what they are after, they have little patience with anybody who tries to hide it from them.

Avoid Anger.

A rule I would urge upon young advocates is "never to be moved to anger by anything, however provoking, and however you may appear, for policy's sake, to be in a passion."

Colton says that the "intoxication of anger, like that of the grape, shows us to others, but hides us from ourselves, unnerves us and unmans us, and in every way unfits us for the business of the courts, especially if the trial is a difficult one."

An advocate should not be disconcerted if his women witnesses lose their tempers in the witness-box, for the rules of evidence happen to be peculiarly repressive of feminine conversation.

Examination of Party to Suit.

In closing this chapter I have but one suggestion more, and that is in regard to the examination of the parties to the suit,—the clients. Here should be pursued quite a different method, even though it allow them a very loose rein.

It is often a clever move to interrogate

a party to a suit—known to be honest—on matters which the advocate knows him to be uncertain, although he can readily prove them by someone else. The client will answer that "he couldn't be certain enough about that to swear to it." When, afterwards, the fact is proved independently of him, everyone will think better of him for being so scrupulously careful in speaking of a matter which might perhaps be vital to his chance of winning his case.

Parties very properly feel that they

are the chief actors in the drama, and are more or less proud of having brought so many people together to hear and decide their wrongs; then, too, it is they who pay the advocates for their time. The parties' appreciation of their own supreme importance reminds me of the story of the highwayman of whom it is related that, when the chaplain on the way to the scaffold, said he feared they would be late, the condemned one answered, "Never trouble about that, sir; they can't begin without us."

The Jury Heard a Phonograph

Did the plaintive tones of "Lasca," a dramatic recital, reproduced on a phonograph, influence a jury of twelve "good men and true" to bring in a verdict of guilty against Robert Moore, and send him to the penitentiary for killing his neighbor, Frank Beree?

Judge Aikman of the district court held that the phonograph and its wheezing product had nothing to do with the verdict, and when the case went to the supreme court that tribunal said the same thing, and sustained the lower court's refusal to grant a new trial.

The friends of Moore, however, refuse to be satisfied, and are now circulating a petition for his pardon from the penitentiary, where he went just one year ago to begin a ten-year sentence. These friends assert that if the jurymen had not heard the phonograph they would never have convicted Moore.

Moore and Beree lived on adjoining farms. Their children quarreled at school, and the parents took up the battles of their children. One word brought on another one morning in May, 1908, when Moore met Beree in the public road. Then another farmer drove up with a load of corn, and, seeing two neighbors quarreling, persuaded both to move on. It looked as though there would be no more trouble, when Beree suddenly turned his horse and rode back toward Moore. Moore believed Beree was going to shoot him, he says, and shot first. Beree fell dead in the road.

When the case came to trial it was a hard-fought one. Half a dozen lawyers were hired by each side. Several of the lawyers had spoken when the court adjourned for supper. After the jury had been fed at the hotel it started down the street, and passed a jewelry store, from which the sounding horn of a phonograph protruded through the window.

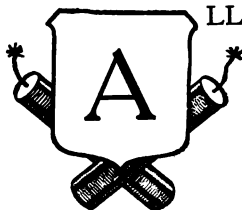
One jurymen proposed that all stop and have some music. They did so, and the first and only selection played was "Lasca." This is a pathetic recital with musical accompaniment. It tells of the death of a beautiful Mexican girl in a cattle stampede. It is a selection well calculated to bring tears and heart throbs. The jury listened to it, and then returned to the court room, where the final plea for the state was made. The lawyer was at his best, and he followed the strains of pathos that "Lasca" had already started. The jury retired, and quickly brought in a verdict of guilty in the second degree.

When the motion for a new trial was being argued, the attorneys for Moore had the phonograph brought to the courtroom, and the selection played for the court. The case was carried to the supreme court. The phonograph "record" was filed with the papers in the case, and the attorneys offered to have it played in the supreme court room, but the justices were willing to take the word of the lawyers for it, so it was not used. The lower court was sustained.

The Law and the Flag

BY JOSEPH T. WINSLOW

DECORATION BY EDWARD J. DAVIS



ALL that will be attempted in this article is a statement of a few facts relative to the flag, which are not commonly met with, and which may be of general interest.

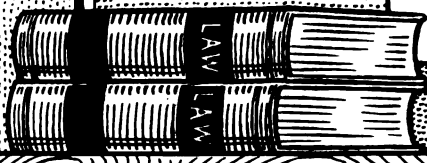
Source of Authority of Flag.

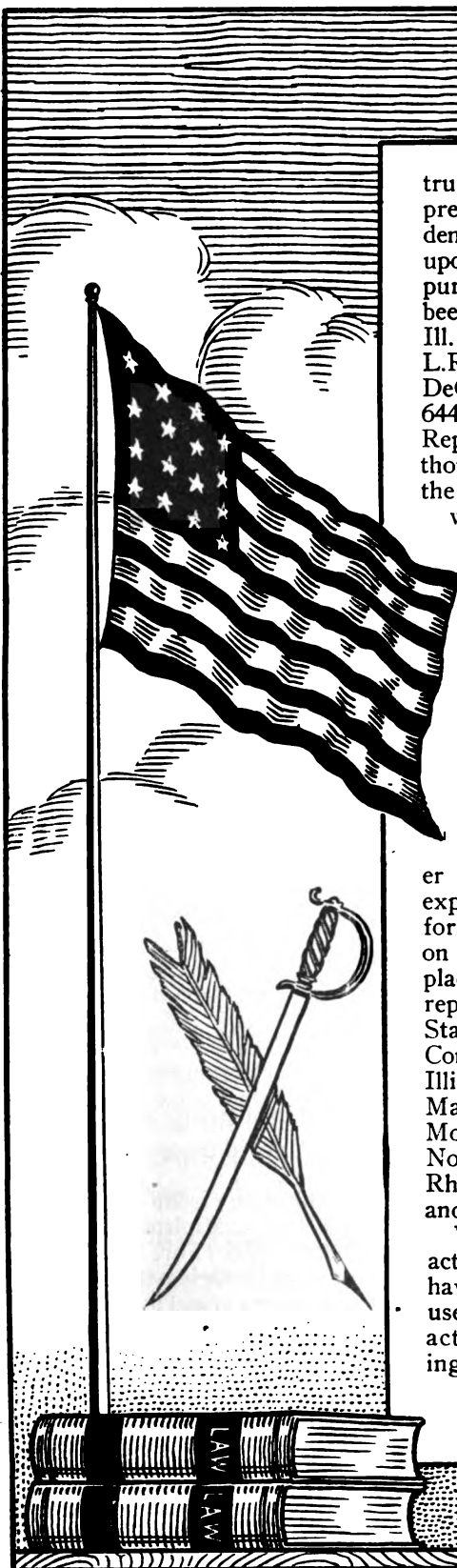
First, What is the American flag, and where shall we find the provisions regulating its colors, etc.? The Revised Statutes, § 1791, provide that the flag of the United States shall be thirteen horizontal stripes, alternate red and white; and that the union of the flag shall be thirty-seven stars, white in a blue field.

It is common knowledge that for every new state which is admitted to the Union a new star is added to the flag, but few know when the addition is effective. This is regulated by the Revised Statutes § 1792, which enacts that on the admission of a new state into the Union one star shall be added to the union of the flag; and such addition shall take effect on the 4th day of July then next succeeding such admission.

Desecration of the Flag by Use for Advertising.

Let us now turn for a moment to the desecration of the flag. May it be used for private advertising purposes? The question of the right of the states to regulate the use of the national flag for such purposes was settled in *Halter v. Nebraska*, 205 U. S. 34, 51 L. ed. 696, 27 Sup. Ct. Rep. 419, 10 A. & E. Ann. Cas. 525, where it was held that the protection of the national flag against illegitimate uses is not so exclusively in-





trusted to the Federal government as to prevent the states from making it a misdemeanor to use representations of the flag upon articles of merchandise for advertising purposes. Acts of this kind had previously been held invalid. *Ruhstrat v. People*, 185 Ill. 133, 76 Am. St. Rep. 30, 57 N. E. 41, 49 L.R.A. 181; *People ex rel. McPike v. Van DeCarr*, 91 App. Div. 20, 86 N. Y. Supp. 644, affirmed in 178 N. Y. 425, 102 Am. St. Rep. 516, 70 N. E. 965, 66 L.R.A. 189, though *CASE AND COMMENT* ventured at the time to contend that these decisions were wrong, and that the flag was a legitimate object of government protection, like money or the governmental seal.

The court in *Halter v. Nebraska*, supra, with respect to the question of police power, said: "It would be going very far to say that the statute in question had no reasonable connection with the common good, and was not promotive of the peace, order, and well being of the people."

In connection with these cases it is of interest to note that the following states have statutes which, among other things, make it a misdemeanor to sell, expose for sale, or have in possession for sale, any article of merchandise upon which shall have been printed or placed for purposes of advertisement a representation of the flag of the United States: Arizona, California, Colorado, Connecticut, Delaware, Idaho, Indiana, Illinois, Kansas, Maine, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, New York, North Dakota, Nebraska, Ohio, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and Wyoming.

While over half of the states have enacted such statutes, Congress appears to have established no regulation as to such use of the flag except that contained in the act of 1907 (34 Stat. L. 1251), authorizing the registration of trademarks in commerce with foreign nations and among the states, "unless such mark consists of

or comprises the flag or coat of arms or other insignia of the United States, or any simulation thereof."

Doctrine of "The Law of the Flag."

Turning now from the question of use for advertising, let us see if the "law of the flag" which obtains in England has force with us. This so-called "law of the flag" doctrine is that, in the absence of an express indication of intention to the contrary, as between the parties to a contract of affreightment, there is a strong presumption in favor of the law of the ship's flag. See *Lloyd v. Guibert*, L. R. 1 Q. B. 115, 5 Eng. Rul. Cas. 870; *Re Missouri S. S. Co. L. R. 42 Ch. Div. 321*, upholding this rule.

This doctrine has not found favor in this country; and in *Liverpool & G. W. Steam Co. v. Phenix Ins. Co.* 129 U. S. 397, 32 L. ed. 788, 9 Sup. Ct. Rep. 469, the validity of provisions of a contract of carriage entered into between a resident of New York and the agent of a British company, for the carrying of property to Liverpool on an English vessel, was held to be determined by the *lex loci contractus*, Mr. Justice Gray remarking that the obligation and the interpretation of a contract are to be governed by the law of the place where it is made, unless the parties at the time have some other law in view, and clearly express their intention that such law shall govern.

International Aspects of the Flag.

International law furnishes much material connected with the flag. An interesting incident of the practice of navies to confirm their flag by firing a gun when meeting within the 3-mile limit occurred prior to the Spanish-American war. The Valencia, a steamship chartered by the Ward Line of New York, when leaving Guantanamo Bay was fired upon twice by the Spanish cruiser *Rēina Mercedes*. The first shot was a blank, and the second, a solid shot, was fired shortly after, upon the Valencia's failing to show her colors. The matter was immediately taken up by Secretary Sherman with the Spanish minister. The latter stated that the Valencia was not flying her flag, although the cruiser was displaying hers; and he further stated that, "following the practice

of all navies, she confirmed her flag by firing a gun, and after the regular interval had elapsed she fired another shot." The captain of the Valencia contended that at the time the cruiser was sighted no flag was visible from his vessel, that he did not take the first shot to be one for his colors, but when the second one fell only 80 yards astern, he realized the purpose of the shots, and then displayed his colors, although none were then visible on the cruiser.

Secretary Sherman determined that no discourtesy was intended by the master of the Valencia, and that his shortcoming, if any, was an excusable error of judgment.

In his communication to the Spanish minister he said that he could not refrain from commenting on the cruiser's recklessness in firing on the Valencia, knowing, as she did, what vessel it was; and he concludes with the following statement: "This government has never admitted that life and property may be unnecessarily jeopardized by superior force, even when an offense against the revenue or other formal laws may have been committed by an American ship within a foreign jurisdiction; and it cannot be expected to admit that one of its ships, or those on board, may be endangered because of a friendly foreign commander's ideas as to maritime punctilio. I must repeat the hope expressed in my note of the 29th ultimo, that such disagreeable incidents as this be not suffered to recur." For. Rel. 1897, 504, 505, 506.

It has been held that the rule in the United States Navy Regulations, that a neutral vessel taken as a prize shall wear her national flag until she is condemned, applies more strongly in cases of customs seizures.

In a communication from Secretary Bayard to Mr. Phelps, Minister to England, November 6, 1886 (For. Rel. 1886, 362, 370), in a case involving the seizure of an American fishing vessel by the Canadian authorities for breach of port rules, in connection with which her flag had been hauled down, the Secretary, in speaking of the application of the rule allowing neutral vessels taken as prizes to wear their flag, said that it applies "*a fortiori* . . . in cases of customs seizures, where fines only are imposed,

and where no belligerency whatever exists. In the port of New York, and other of the countless harbors of the United States, are merchant vessels to-day flying the British flag, which from time to time are liable to penalties for violations of customs laws and regulations. But I have yet to learn that any official assuming, directly or indirectly, to represent the government of the United States, would under such circumstances order down or forcibly haul down the British flag from a vessel charged with such irregularity; and I now assert that if such act were committed, the government, after being informed of it, would not wait for a complaint from Great Britain, but would at once promptly reprimand the parties concerned in such misconduct, and would cause proper expressions of regret to be made."

The case in question was adjusted by the sending of an apology from the Canadian authorities, forwarded through England.

Salute to the Flag as Reparation for Insult.

A noteworthy incident, illustrating the

significance which a salute to the flag may have, occurred during the Spanish occupancy of Cuba. In 1873 the *Virginus*, flying the American flag and having American register, was overtaken and captured by a Spanish man-of-war, and certain members of her crew were condemned to death, and shot, while others were held as prisoners. The ostensible charge was piracy, which was based on the fact that the vessel was engaged in the service of the Cuban insurgents in conveying arms, etc.

The Spanish minister subsequently stated that the government was resolved to abide by the principles of justice and international law, and expressed a desire to make reparation for the offense committed.

The reparation demanded was a salute to the flag. The salute was agreed to if it should be found that the *Virginus* was at the time of her capture entitled to fly the American flag. It was subsequently found, however, that the papers of the vessel had been obtained by a false affidavit of ownership, and the demand for the salute was therefore dropped.

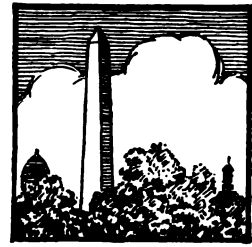
To the Union we look up as the temple of our freedom,—a temple founded in the affections and supported by the virtue of the people. Here we will pour out our gratitude to the Author of all good, for suffering us to participate in the rights of a people who govern themselves. Is there, at this moment, a nation on the earth which enjoys this right, where the true principles of representation are understood and practised, and where all authority flows from and returns, at stated intervals, to the people? I answer, there is not. Can a government be said to be free where those do not exist? It cannot.—William M. Evarts.

Trial of Savannah Privateers.



The Editor's Comments

You are cordially invited to send us some
"Reader's Comments."



Case and Comment

THE LAWYER'S MAGAZINE

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Edited by Asa W. Russell

sota, Missouri, Montana, Nevada, New Jersey, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Vermont, Washington, and Wisconsin. The public is becoming convinced of the folly of celebrating a holiday in a manner which not only entails large and wasteful expenditure, but annually results in loss of life and maimings which are appalling in the aggregate.

The Rev. Charles I. Truby, of Jeffersonville, Indiana, declares that more lives have been lost in the senseless and criminal celebration of July Fourth than in historic battles of the Revolution. "Hospitals in our great cities," said Dr. Truby, "prepare for July Fourth just as if they were preparing for battle. The corps of nurses is increased, bandages are prepared, anti-toxin is stored away ready for instant use, all doctors must be at their posts of duty waiting for the maimed, the crippled, the wounded to be gathered in. Last year the number of maimed, wounded, and killed in our Republic reached the gigantic total of 5,307. The red firecracker of 1909 was far more deadly and destructive than the Redcoats of 1776."

A gross injustice has been done the children in making them responsible for the continuance of these dangerous observances. The children have had to make use of those means of enjoyment that are within their reach, but this year, apparently for the first time, the young people have been consulted upon this matter. They are manifesting a sense of propriety and fitness that is very gratifying, though something of a surprise to many of their elders. In Bloomfield, New Jersey, the pupils of the public schools voted to abolish explosives by a majority of 106; in Montclair, New Jersey, the vote stood 663 against, to 287 for, a loud Fourth, while in Wilkes-Barre, Pennsylvania, 4,252 declared for a

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JULY, 1910

No. 2

A Safe and Sane Fourth.

THE movement to reform our method of celebrating the Fourth of July is almost nation wide. The governors of the following states have this year taken a positive stand for a more rational and less dangerous celebration of the nation's greatest and most honored holiday: Alabama, Colorado, Connecticut, Delaware, Idaho, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minne-

safe and sane celebration, and but 858 against it.

The mayors of forty-five cities have announced their determination to enforce the ordinances against the use of dangerous explosives. The great city of New York has this year wheeled into line with Cleveland, Ohio, Minneapolis, Minn., Toledo, Ohio, Washington, D. C., Springfield, Mass., and other cities which enforced prohibitory ordinances last year.

It must be conceded that the problem of providing substitute methods of celebrating the nation's natal day is difficult of solution, but many excellent plans have been suggested.

Several prominent New York city citizens have proposed that there be hundreds of small celebrations in all parts of their city, one in each of the smaller parks, giving the children themselves an opportunity to act out the struggles for liberty,—not only the American struggle, but also Italian, Russian, German, Swiss, according to the locality of the district,—with brief speeches by popular orators to show the meaning of the events acted out by the children. The singing of patriotic songs by the children, it is urged, should have a prominent part in such open-air celebrations. Children like to march; so hundreds of parades, with bands at the head, are suggested. If these plans are carried out, the Fourth will remain "children's day," even though there be no fire-crackers. Kite-flying contests in different parts of the city are also proposed. Lee F. Hanmer, of the Russell Sage Foundation, has suggested that at a given time, perhaps at 12 o'clock noon, all the church bells of the city ring out, as the old Independence bell did, that whistles blow for five minutes, and that promptly at 12 each child release a toy balloon with an American flag attached. It has also been proposed that motion pictures of American history be shown in the small parks, in the evening.

Chicago has planned a Fourth of July spectacle to keep the populace busy and interested. It is intended to have a parade and maneuvers by 5,000 troupes, and there will be an airship *fête*, with free seats for 25,000 children. Pittsburg projects a day of pageantry for the spec-

tacular representation of epochs and events in our national history. Philadelphia proposes a monster patriotic program, including a military parade, displays of fireworks under public authority, and expert supervision, and games for children in every park and playground. Springfield, Massachusetts, will repeat its experiment of last year, and celebrate the Fourth with a parade, public band concerts, land and water sports, a historical pageant, and municipal fireworks. In Boston there will be a parade entitled "Independence and Its Fruits," and it will, by means of floats and marching detachments, depict scenes of the time of the Revolution, and others showing American progress, including the periods of the Civil, Indian, and Spanish wars. It will follow the German idea of what a parade of this sort should be,—quality and not quantity,—although it will be a fairly long procession if plans are carried through. Among the special features to be depicted in the floats are the Battle of Bunker Hill, Battle of Lexington, Battle of Concord, General Gates and the Schoolboys, Boston Tea Party, and numerous others.

So far as the discussion in the newspapers of this country goes, the principle of the "safe and sane" Fourth of July is completely accepted. A great change is seen by those who have followed the agitation from its rather weak and timid beginnings ten or a dozen years ago to its bold and insistent demand that the Fourth of July shall no longer be classed as a day of horrors. At the first, scores of newspapers scoffed at any suggestion that the barbarisms which marked the recurrence of Independence Day should be eliminated. Who would offer such an affront to patriotism? Who would curb the free American spirit? Who would subtract from the immemorial rights of the small boy?

But sober thought has decided that a tin horn and a cannon cracker are not the symbols of genuine patriotism; that a clatter and a din are, after all, not very appropriate or meaning ways for a great civilized nation to celebrate the anniversary of its birth.

Taxing the Lawyers.

HONORABLE James Helme, of Adrian, Michigan, according to the Battle Creek Journal, has come forward with an idea. Says James: "There is a dog law which helps eliminate worthless dogs. Tax the lawyers of the state. We have too many of them, and a tax of \$25 or \$50 each would help weed out the poor ones." To anybody who has ever attempted to weed out a lawyer in any way, shape, or manner, the remarks of Mr. Helme will bear peculiar interest.

It is not exactly his idea that every attorney should go about with a little brass license tag suspended about his neck, or that he should wear a muzzle during the humid months, for he is a lawyer himself; but since he is a lawyer, one can readily perceive his feelings in the case of weeding out the lawyers. The profession is getting to be uncomfortably crowded. Every year the university graduates several hundred more. This condition has existed until the hanging out of shingles has seriously threatened the reforestation plan. James is right in a way. There are too many poor lawyers, but a license fee is not the best way to eliminate them.

Civil Pensions.

PRESIDENT Taft and his Cabinet are committed to a contributory retirement fund for the pensioning of aged government clerks. This question of pensions for government clerks has been agitated in Congress for a number of years, and the reorganization of the executive departments on an efficiency basis has brought the administration face to face with the problem. It is asserted, says the Philadelphia Record, that in many branches of public employment, as in the naval and military service, the revenue marine, the Federal judiciary, and municipal police and fire departments, retirement on half pay, more or less, is now the privilege of those who have become incapacitated through age, accident, or disease, after having faithfully served the public; that the practice is extending in private employments, and is being fol-

lowed by a steadily increasing number of manufacturing, mining and railroad corporations. Finally, it is urged that a civil pension list would be but a logical extension of the merit system, and that in the public service of most European nations the practice has long been established.

In answer to this last argument it is said that the compensation received by employees in the service of the United States is liberal enough to enable them to insure against the disabilities resulting from age, accident, or disease, which is not the case in Europe, where official salaries in the lower ranks are extremely small. It is further urged that the system of pensions and retirement pay, so far as it has been adopted in this country, exists mainly in dangerous employments; and that the exceptions which have been made for military and naval officers, and, in a modified way, for policemen and firemen, cannot be regarded as precedents in favor of a general extension of the system to the host of clerks and inspectors in the employ of the government. Moreover, the benefit funds for teachers, police, and firemen in our municipalities, and the insurance funds created for their employees by some of our great corporations, are sustained to a large extent, if not wholly, by the contributions of the beneficiaries themselves.

In view of these objections, the project to insure superannuated Federal employees, as recommended to Congress by Secretary MacVeagh and indorsed by the President, takes the form of a measure which would require government employees to become their own insurers. A fund is to be maintained by the deduction of a certain percentage from the salaries of all persons in the classified civil service, the government acting as trustee; and from this it is proposed to provide for the aged and otherwise disabled clerks. To make a beginning it would be necessary to appropriate a comparatively small amount of public money. There is an accumulation of "dead wood" in all the departments. There are many employees who have done excellent work in their time, but whose efficiency has been reduced to zero by advancing years. The plan would enable the secretaries to clear

their decks without exposing these employees to cruel hardships, and the public service would be bettered.

This scheme may in time relieve the hardship of the situation, but is not yet available for those who, it is reported, were given notice to quit on June 30th. One account states: "Seventy-three faithful employees of the Treasury Department at Washington, most of them with dependent families, have been given notice to quit the service at the end of June. They have been turned out to die. The government has wrung from them the last drop of useful service."

Another despatch states: "On a recent Saturday fully 200 of the fatal blue envelopes were distributed among the Treasury employees, noting that their services would no longer be required after June 30, the close of the fiscal year. This means, of course, their dismissal from employment, and that means food and raiment for from 1,500 to 2,000 people.

Nearly 90 per cent of the discharged are said to be old men and women who have been in the government service for many years, some of them for a generation. Nearly all of these have lived up to their incomes, and they go into the world hopeless and poverty stricken and helpless to secure other employment. It is a sympathetic if not a pathetic situation. Their hair now whitened, their

fingers tremulous, their eye-sight dim, these workers are dazed by the suddenness of the blow, and know not which way to turn.

While the salaries of the President, members of Congress, and the other high officials have been increased, the wages of the civil service employees have not been raised for over fifty years. With the cost of living ever increasing, it has therefore been impossible for these clerks to save anything for a "rainy day." Most of them had a continuous struggle to make both ends meet.

On every hand, government officials declare that it is "impossible" to have Congress pass an old age pension bill for the civil servants of the government. Despite the fact that these soldiers of peace have the same employer as the soldiers of war, these "can't-do-it" statesmen urge that Uncle Sam cannot afford to put all of his employees on the same plane. Why should they not be provided for as well as President's wives, or martial heroes who never saw a hostile battle-flag or heard a shot fired in anger?

In the meantime those that are now being discharged are without support. The workers, who have given long and faithful service to the richest government on earth, are destitute. There certainly ought to be some means devised of affording relief.

✓.

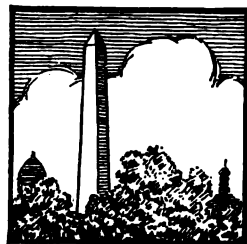
Everywhere there is order; everywhere there is security. Everywhere the law reaches to the highest, and reaches to the lowest, to protect him in his rights, and to restrain him from wrong; and over all hovers liberty, that liberty which our fathers fought and fell for on this very spot, with her eyes ever watchful and her eagle wing ever wide outspread.—Daniel Webster.

Address at the completion of the Bunker Hill Monument, Charlestown, Mass., June, 1845.



Among the New Decisions

A brief review of recent important or novel
decisions made by the courts of the
English speaking world.



Snowstorm as act of God.

The authorities are apparently agreed upon the proposition that an unusually heavy snowstorm which ties up railroad operations to such an extent as to obstruct the movements of trains is an act of God which will relieve a common carrier from liability for loss of goods or for injuries to passengers caused thereby. In consonance with this rule, it is held in *Cormack v. New York, N. H. & H. R. Co.* 196 N. Y. 442, 90 N. E. 56, 24 L.R.A.(N.S.) 1209, that a snowstorm and wind which so drifts the snow over the switches in a railroad yard that they cannot be operated from the tower, and cannot be dug out by the available men, so that the use of the yard has to be abandoned to such an extent that an incoming train cannot approach nearer to the station than 600 feet therefrom, is an act of God which will relieve the carrier from liability for detaining passengers at that point, although they are thereby compelled to remain in the cold over night.

Power of bank or trust company to guarantee sale of securities.

An apparently new question is presented in the case of *Gause v. Commonwealth Trust Co.* 196 N. Y. 134, 89 N. E. 476, 24 L.R.A.(N.S.) 967, holding an attempt by a trust company organized to do a banking business, and to perform duties which are largely judicial in their nature, to guarantee the sale of securities of a stranger, in order to induce him to come into a pooling agreement in which the company is not interested, *ultra vires* and void.

Validity of retrospective by-law.

The validity of a retrospective by-law, or other rule of a benefit association, as to the manner of establishing a claim against it, is upheld in *Mon-*

ger v. New Era Association, 156 Mich. 645, 121 N. W. 823, holding that the contract or vested rights of a member of a mutual benefit society, who has agreed to be bound by future by-laws, are not impaired by a by-law requiring that all claims against the society must be submitted for adjustment to the tribunals established within the association. The sole preceding decision discussing the question supports the conclusion reached in the *Monger Case*, as appears by the note appended thereto in 24 L.R.A.(N.S.) 1027.

Right of indorser of lost bill, note or check to maintain action thereon.

An unusual question is presented by the South Carolina case of *Smith v. Nelson*, 65 S. E. 261, holding that the payee of a check alleged to be lost, who has indorsed it and delivered it to a stranger in payment of a debt, has sufficient interest to be entitled to maintain an action against the maker for its amount. The earlier decisions upon this question, as disclosed by a note accompanying the case in 24 L.R.A.(N.S.) 644, have not been uniform.

Liability of state on local improvement bonds.

A novel and interesting question is presented by the case of *Union Trust Co. v. State*, 154 Cal. 716, 99 Pac. 183, 24 L.R.A.(N.S.) 1111, holding that the state is not liable on bonds issued by a city for the making of a local improvement, which were to be paid from assessments on property benefited, merely because the state had authorized their issuance, and had provided how the funds should be raised, and because the officers charged with the duty of collecting the funds had failed to do so.

Liability of connecting carrier for loss of baggage. The liability of a connecting carrier for the loss of baggage belonging to a passenger who discontinues his journey or changes route at the junction point seems to have been considered for the first time in the North Carolina case of *Kindley v. Seaboard Air Line R. Co.* 65 S. E. 897, 24 L.R.A.(N.S.) 634, holding that a carrier which receives at a junction point a trunk checked on a through ticket by another carrier with which it has no partnership relations, and carries it to destination after the passenger, because of the lateness of his train, has turned back to his starting point, is not, where by the statute the unused portion of his ticket must be redeemed, so that it will receive no compensation for its service, liable for the theft of articles from the trunk while in its possession, in the absence of gross negligence on its part, although it deposits the trunk in its station when destination is reached.

Validity of agreement not to engage in competing business. Agreements by employees, ancillary to contracts of employment, restricting their right to labor along the same lines, either for themselves or others, upon the termination of their present employment, are not favored in law, and, where general as to scope of territory, are prima facie void. The cases upon the subject are reviewed in a note in 24 L.R.A.(N.S.) 933, which accompanies the New Jersey case of *Taylor Iron & Steel Co. v. Nichols*, 69 Atl. 186, holding that a contract for personal services, which forbids the employee to divulge any information known to him, or acquired by him during his employment, relating to the process of manufacture, and which requires him to hold inviolate the treatment, processes, and secrets known to or used by him in the works of the employer, and which is unlimited as to time and place, will not be enforced.

Validity of agreement in restraint of trade ancillary to sale of business. Covenants in general restraint of trade, ancillary to the sale of a business, trade, occu-

pation, or profession, together with the good will thereof, may be held violative of public policy, either because the restriction is more extensive than the protection of the covenantee reasonably requires, or because, irrespective of the necessities of the covenantee, the interests of the public will not permit of a general restriction. The question is presented in the case of *Fleckenstein Bros. Co. v. Fleckenstein*, 76 N. J. L. 613, 71 Atl. 265, holding that a contract by one selling his interest in the business of curing and selling meat, not to engage in a competing business within 500 miles of the city where the business is located, may be construed to mean that he will not engage in such business either in such city or within 500 miles thereof, and may be held reasonable and enforced so far as the city is concerned, although it may be found unreasonable as to the exterior territory. The case is accompanied by an extensive note in 24 L.R.A.(N.S.) 913, in which the decisions on the subject are reviewed.

Former jeopardy. A sharp conflict of authority exists as to the effect of granting a new trial after a conviction upon a lower charge, where the defendant was indicted for a higher crime. One theory is that if a defendant voluntarily appeals from a conviction of the lower charge, he thereby waives the acquittal upon the higher charge, and, upon the conviction being set aside, his position is as if no trial at all had been had. The opposing theory is that the defendant, having once been acquitted of the higher charge, cannot again be tried upon that charge without being denied the constitutional protection against double jeopardy. The Georgia case of *Brantley v. State*, 132 Ga. 573, 22 L.R.A.(N.S.) 959, 64 S. E. 676, adheres to the former view, and has recently been affirmed by the Supreme Court of the United States (U. S. Adv. Sheets 1909, p. 514), which holds that a person convicted of a lesser grade of homicide than that charged in the indictment, who obtains a reversal of the judgment upon appeal, is not placed twice in jeopardy by a second trial for murder under the same indictment.

Survival of statutory action for wrongful death to personal representatives of original beneficiary.

Considerable conflict of opinion exists among the courts as to the effect of the death of the beneficiary of a statutory right to recover for another's wrongful death, upon the cause of action. Where no action has been begun by the original beneficiary, it is held in the recent Missouri case of *Gilkeson v. Missouri P. R. Co.* 121 S. W. 138, that the right of action does not survive to his estate. This view is not without support in the earlier decisions, as disclosed by the note appended to the *Gilkeson Case* in 24 L.R.A. (N.S.) 844.

Presumption of fraud from vendor's retention of chattel.

There has been a marked conflict on the question whether the presumption of fraud flowing from the retention of a chattel by the vendor is conclusive or not; so much so that the matter has generally been taken in hand by the legislature, and settled one way or the other. The modern doctrine is that the presumption is *prima facie* only. The cases upon this question are discussed in an exhaustive subject note in 24 L.R.A. (N.S.) 1127, appended to the case of *Wilson v. Walrath*, 103 Minn. 412, 115 N. W. 203, holding that a sale of personal property, the possession thereof remaining in the vendor, is, under Minn. Rev. Laws 1895, § 3496, presumptively fraudulent and void as against the creditors of the vendor and subsequent purchasers in good faith.

Judicial sale of insured property as change in interest, title or possession.

It is well settled that a judicial sale of insured property is no such change in title, interest, or possession as will defeat a recovery upon a policy of insurance which provides that it shall be avoided if such change occur, where there is left in the owner of the property an equity of redemption, and the loss occurs before the expiration of the period of redemption. But it is held in the recent Washington case of *Moller v. Niagara F. Ins. Co.* 103 Pac. 449, that a confirmed adminis-

trator's sale of insured property is within a provision of the policy making it void if any change takes place in the interest, title, or possession of the subject of insurance by legal process, voluntary act of the insured, or otherwise, although no deed has been delivered or money paid, since the equitable title passed when the sale was confirmed, where the statute provides that when certain facts are shown to the court it shall make an order confirming the sale and directing conveyances to be executed, and such sale from that time shall be confirmed and valid. The cases upon this subject are reviewed in a note accompanying the decision in 24 L.R.A. (N.S.) 807.

Libel without intent to defame.

The proprietors of an English newspaper published an article containing defamatory statements concerning the conduct, at a motor festival, of an imaginary person to whom they gave a fictitious name so unusual as not likely to be that of an existing individual. The name (Artemus Jones) was in fact that of a barrister, who brought action against the proprietors and publishers of the newspaper for libel. Although the defendants' testimony that they knew of no such person as the plaintiff was quite frankly accepted as true by counsel for the plaintiff, yet the latter was awarded £1750 damages.

In the court of appeal it was held (*Jones v. Hulton* [1909] 2 K. B. 444, 78 L. J. K. B. 937), per Farwell, L. J., that it is not enough for a plaintiff in libel to show that the defendant has made a libelous statement, and that the plaintiff's friends and acquaintances believe it to be written of him; he must also prove that the defendant printed and published it of him. This can be done not only by showing that such was the defendant's actual intention, but also by showing that the statement is made recklessly, careless whether it fits the plaintiff or not. The question is not what the defendant really intended in his heart, but what his words, taken with the relevant surrounding circumstances and fairly construed, meant. The fact that the plaintiff was unknown to the defendant is not of itself a conclusive defense. The House of Lords

has unanimously affirmed the judgment of the court of appeal.

It has been heretofore decided, in *Shepherd v. Whitaker*, L. R. 10 C. P. 502, says the Law Quarterly Review, that if an employer intends to publish a true and harmless statement about a person, but, by a mechanical blunder of his servant, the statement as printed becomes different and defamatory, the employer is liable to the person injured. Now the further step is taken that if a publisher uses a mere typical or fictitious name, without knowing that there is any real person called by that name, then if there is such an existing individual, and if the words may be reasonably understood as defamatory of him, a jury may find that he has actually been defamed, and award him damages. This may be very just law, provided we bear in mind the qualification intended by Farwell, L. J., namely, that there is an element of recklessness. It is material that the publisher neither knew nor cared whether there was a real person of the name used, and took no pains to find out or to make it clear that his words did not refer to any real person. All the learning and subtlety of the Lord Justice, backed by the agreement of the noble and learned Lords above named, still fail to convince us that this is not also very new law. As it stands, Farwell, L. J., has not told us exactly how prudent he thinks a writer ought to be. Will timid novelists take refuge in the conventional Titius and Sempronia, Doris, Lycidas, and the rest, who were the puppets of the 'Tatler' and the 'Spectator' under Queen Anne? Or will some litigious John Stiles bring actions against the publishers of all the text-books which impute criminal offenses or bankruptcy to his shadowy namesake? (*Protestando* that if there be any real John Stiles who sees these lines, we distinctly and expressly do not impute litigiousness to him, or to any other real John Stiles, his, their, or any of their executors, administrators, or assigns.) On the whole we rather think it will turn out that the practical effect of the decision is not very great.

Duty of servant to obey his master's orders. This interesting question was passed upon in the case of *Development Co. v. King*, 88

C. C. A. 255, 161 Fed. 91, holding that the fact that a reasonable order given by an employer to his employee is distasteful to the latter, and given in bad faith, for the purpose of getting rid of him, does not justify refusal to comply with it. It is further determined that one employing another to perform such duties as he may be directed to perform cannot require him to make investigations involving the expenditure of money, without making reasonable provision therefor, in view of the conditions under which the investigations are to be made. Whether or not an order issued to a servant so employed is unreasonable, so as to justify his refusal to obey it, is held to be a question for the jury. The cases upon the question are reviewed in an extensive and exhaustive subject note which accompanies the King Case in 24 L.R.A.(N.S.) 812.

Slander and libel in charging woman with unchastity. The numerous cases relating to this subject are collated in an extensive and exhaustive subject note in 24 L.R.A.(N.S.) 577, appended to the case of *Battles v. Tyson*, 77 Neb. 563, 10 N. W. 299, holding that to charge a woman with being a lewd character, of using her body for commercial purposes, and with keeping a gambling room, is actionable *per se*. The note is also accompanied by the case of *Brinsfield v. Howeth*, 107 Md. 278, 68 Atl. 566, holding that a charge that a girl is fast, of loose character, and not fit to teach school, is not actionable *per se*, in the absence of anything to show that the words had acquired by local understanding a meaning imputing want of chastity.

Effect on lien of mortgage of entry of judgment upon bond or note. The numerous authorities upon this question are reviewed in a note in 24 L.R.A.(N.S.) 1095, appended to the recent Kansas case of *Rossiter v. Merriman*, 80 Kan. 739, 104 Pac. 858, which, in conformity with the general rule that the lien of a mortgage is not destroyed by the mere entry of judgment, without satisfaction, upon the note or bond which it secures, in an action which did not seek also to foreclose the mort-

gage, holds that a creditor holding a note secured by a mortgage may take judgment on the note alone, without releasing the mortgage lien or waiving his right to foreclose the mortgage.

Liability for injury from hanging wires. As shown by a review of the authorities in 24 L. R. A. (N. S.)

978, it is generally held that where a company maintaining overhead wires permits one of them to fall to the ground, or, with knowledge of the fact, allows a piece of wire to hang over its wires in such a way as to come in contact with the people on the street, the company will be liable for any injuries resulting therefrom, notwithstanding the fact that some third person has in some way moved the wires, and this act might be considered the immediate cause of the injury. The liability of the company is placed upon the ground that it should have foreseen that some person would interfere with the hanging wires. The case of *Seith v. Commonwealth Electric Co.* 241 Ill. 252, 89 N. E. 425, which accompanies the note, holds, however, that an electric light company which is negligent in the maintenance of its wires so that one falls near a sidewalk is not liable for injury to a passer-by through contact with the wire, caused by its being struck by a policeman's club, not for the purpose of removing it as a source of danger, since the company was not bound to anticipate such interference with the wire, and its negligence was not, therefore, the proximate cause of the accident.

Prohibition to restrain suit prosecuted collusively or for ulterior purpose. This unusual question was considered in the

Utah case of *Board of Home Missions v. Maughan*, 101 Pac. 581, 24 L.R.A. (N.S.) 874, holding that a court of general jurisdiction will not be prohibited from entertaining a garnishment proceeding, although it is instituted collusively, in the interest of the principal debtor, for the purpose of vexing and harrasing the garnishee and obtaining evidence for use in another proceeding, where the statute authorizes prohibition when the proceed-

ing against which it is sought is without or in excess of the court's jurisdiction. In an earlier case where a writ of prohibition was sought to restrain further prosecution of a criminal charge, the court intimated that even though the justice acquired and assumed jurisdiction for ulterior purposes, while it would be reprehensible in him as an officer, and would furnish a sufficient reason for invoking the statute providing for changes of venue, it did not go to the jurisdiction of the justice, and furnish a basis for the issuance of the writ of prohibition.

Right to jury in quo warranto proceedings. The question of the right to a jury trial in quo warranto proceedings has been seldom adjudicated, but, in so far as such authorities exist, they disclose a marked difference of opinion. The conflict is due in part to the dissimilarity of state statutes, and, in their absence, to the fact that the common law of England governing the question was unsettled at the time it was transplanted to this country. There is also a lack of agreement whether the right to a jury in such cases was a common-law right which was preserved by the constitutions. It may be said, however, that the practice has been almost universal to submit the questions of fact arising in quo warranto proceedings to a jury. The earlier cases upon this subject are reviewed in a note to *Buckman v. State*, 24 L.R.A. 806, while the more recent decisions are collated in a note in 24 L.R.A. (N.S.) 639, appended to the recent Oklahoma case of *State ex rel. West v. Cobb*, 104 Pac. 361, holding that the law in force in the territory of Oklahoma at the time of the admission of the state gave a respondent in an action in the nature of quo warranto a right to a trial by jury of all issues of fact, and that this right remains in force in the state.

Car advertising. A question upon which there is but little direct authority is presented in the Virginia case of *National Car Advertising Co. v. Louisville & N. R. Co.* 66 S. E. 88, 24 L.R.A. (N.S.) 1010, holding that a railroad company has no implied power to grant the exclusive right to use its box cars for ad-

vertising purposes. The few earlier decisions seem to agree with this case in holding that the leasing of space in the cars or coaches for advertising purposes is not a necessary incident to the express or implied powers commonly granted common carriers, or the purposes for which these corporations are chartered, and that, therefore, the acts of a common carrier in entering into a contract for the lease of advertising space on its cars or coaches is an *ultra vires* act.

Liability for property destroyed after final judgment in replevin. A question not previously passed upon by the courts was presented by the South

Dakota case of *Ewald v. Boyd*, 123 N. W. 66, 24 L.R.A.(N.S.) 739, holding that one against whom is entered a judgment for the return to another of certain personal property or its value cannot avoid liability for the value of the property, in case it is destroyed before it is actually returned, by notifying the other party to come and get it, since it is his duty to make the delivery. By the weight of authority, the destruction of the property in the hands of the losing party pending suit, even without his fault, does not excuse him from paying for its value. There seems to be no reason why a different rule should obtain when the destruction occurs after final judgment, but before delivery of the property.

Civil liability for injury to trespasser by means of dangerous instrument. A novel as well as difficult question is presented in the recent Alabama case of *Scheuermann v.*

Scharfenberg, 50 So. 335, holding that the owner of a storehouse in which goods and other valuables are kept by him is not liable in trespass to a would-be burglar who is shot by means of a spring gun placed in the building for the purpose of shooting persons who may attempt to burglarize it, where the gun is discharged by the burglar after the breaking is complete. A man who sets spring guns and mantraps upon his premises must see to it that they do not inflict injury upon those who go thereon for lawful purposes, nor has he a right to defend his property against mere trespassers by means of such deadly

agencies, but he may undoubtedly use them for his protection in the nighttime from thieves and burglars. His liability as to mere trespassers who have no felonious intent depends, however, upon notice to them of the dangerous agency, for it is generally held that an injury sustained by one who defiantly places himself in peril after due notice must be taken to be the result of his own act, for which he cannot recover. The recent cases upon this question are reviewed in a note which accompanies the *Scheuermann Case* in 24 L.R.A.(N.S.) 369, which is supplementary to an earlier note in 29 L.R.A. 154.

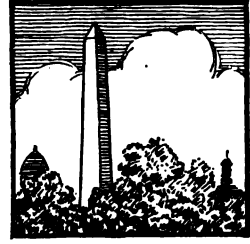
Right of action by owner of upland for interference with access to navigable water. The recent case of *Home for Aged Women v. Commonwealth*, 202 Mass. 422, 89 N. E. 124, 24 L.R.A.(N.S.) 79,

holds that a plan for the improvement of a tidal body of water for the benefit of navigation, which includes the construction of a public park along a strip formerly occupied by the tide water, in front of riparian property which is thereby completely cut off from access to the water, does not exceed the power of the government over the land under the water, which was owned by it, so as to entitle the riparian owner to compensation for the injury thereby caused to his property. This decision is not in conformity with the rule which has prevailed in England and the countries following its law, to the effect that riparian rights cannot be taken by the public for the improvement of navigation without compensation. It is evident that the English doctrine cannot well be denied in this country, if the riparian right of access is recognized unqualifiedly as property, and thus brought within the protection of the Constitution. To avoid this result, the United States Supreme Court has refused so to recognize it. Another method of evading the English rule has been employed in New York and Wisconsin, the courts of which have held, similarly to the Massachusetts case under consideration, that the right of the riparian owner, although property, ceases to exist when it conflicts with the public right to improve navigation.



New or Proposed Legislation

A glimpse of statutory law in the making or in the earlier stages of its operation.



The Inauguration Date.—The Henry resolution, to change the date of the inauguration of future Presidents of the United States from March 4 to the last Thursday in April, failed of passage in the House of Representatives by but a single vote. No one will suppose that three-quarters of the states would have ratified an amendment to the Federal Constitution for changing the inauguration date to a more pleasant season. The surprising thing is that almost two-thirds of the membership of the House was ready to send such a proposed amendment to the states for action. The whole agitation, there is reason to believe, had its inception among the business men of Washington, who saw greater profits if future Presidents could be inducted into office in balmy weather. It is difficult to understand why so many others took the matter seriously.

One of several arguments marshaled by the committee in its report in favor of the resolution is that the parade "stimulates a useful rivalry in the state troops that take part in it." The committee indulge in an unconscious joke when they say that "this amendment will secure good weather for the great public function of the inauguration of the President and Vice-President." The present diverse system of inaugurals, by which a congress takes office thirteen months after its election; by which a congress repudiated at the polls must still legislate for months thereafter,—that is the system that needs reforming. Until some such sweeping readjustment can be undertaken, let us continue to install our Presidents on the time-honored date, even though the wind may occasionally be cold.

Nonpartisan Nomination and Election of Judges.—Operating under the nonpartisan principle in the election of justices, North Dakota will this year try out its

new law passed by the last legislature, and elect three members of the supreme court of the state. The manner of electing the justices under the new law is very simple. The law prescribes that in the petitions of nomination no reference shall be made to the party affiliations of the candidate. This applies to supreme court, as well as district court, candidates. In the primary election the names of all candidates nominated are placed on a separate ballot known as the "judiciary ballot." The number of candidates nominated in the primary election shall be just double the number of positions there are to fill, so that this year six candidates will be nominated in the primary to make the race in the regular fall election. In the fall elections the six candidates go on a separate ballot without party designation, and the three highest will be declared elected.

Citizenship for Porto Ricans.—It is rather late in the season to expect that so important a bill as that conferring American citizenship on the Porto Ricans will become law before adjournment, but a beginning has been made, and it is not likely that Congress can stop short of granting the boon for which the islanders have so long petitioned. Once citizenship is granted, the demand for statehood will be heard, and the proponents of the Olmsted bill are only taking time by the forelock in restricting the franchise to those who can read or write, who own property, or who pay a poll tax. An island state is not desirable, but neither is a community of 1,000,000 people, American citizens, persistently discontented by their exclusion from the Union.

The Naturalization Laws.—Naturalization laws are working hardship to hundreds of residents of the United States, say government officials. Men

who came to this country as long as thirty years ago, and who settled and reared their families here, are being told that they are not citizens because of some defect in their naturalization in the dim past. Men who have lived in the United States half of their lives suddenly awake to the fact that they cannot take civil service examinations for government positions, that they cannot obtain marine engineer licenses, that they cannot have the protection of this country when they travel, and that they can no longer vote. If government officials happen to learn that the naturalization details were faulty, the man can be deprived of his citizenship, no matter how long ago the supposed naturalization. A man settles here, brings children under twenty-one with him, thinks he becomes a citizen, and finds years later that he has been an alien all along. His sons, now in middle life, find they are not citizens. In real-estate matters, if a certain status exists for twenty-one years, it cannot be contested. Lawsuits of almost all kinds are outlawed after a certain number of years, but an alien not properly naturalized, no matter how long his residence, or how good his behavior, is still an alien.

Complaint is also made by the National Liberal Immigration League of New York that there are too few judges to keep pace with the applications for citizenship. It is said that many of those who go for their second papers have been told to return in six months, or even more. The officers of the league have circulated petitions to the governor and to Congress to appoint a state and a United States court judge whose sole duty shall be to look after naturalization matters.

Regulation of Tenements.—A bill introduced in the Kentucky legislature provides for regulating the sanitation and ventilation of tenement houses. Such enactments are highly meritorious. All students of sociology and criminology, says the *Courier-Journal*, recognize the intimate connection between physical and moral conditions in the slums of large cities. Where persons are compelled, by their poverty and the shiftlessness of their landlords, to live like outcasts, they are in a fair way to become outcasts. The moral stamina that is required to

keep a life wholesome amid unwholesome surroundings is not a common heritage.

But putting aside, for the moment, the question of the moral effect of ill-regulated tenements, there is to be considered the dollar and cents question of providing for improving the public health and reducing the expense to the community of maintaining pauper invalids in public institutions. It is very easy to show that men and women who are willing to work, and who in health are self-supporting, are pauperized and disabled and thrown upon the community for support by being forced to live where ill-ventilated hovels breed tuberculosis, where improper water supply breeds typhoid fever, and where various other potential causes of illness exist. These evils result from the short-sighted policy of the landlord who looks for to-day's rents, and pays no attention to the condition of his property. In the end a loss is suffered by the owner from the deterioration of property left uncared for, loss of rents through the inability of disabled tenants to meet obligations, and temporary vacancy of property owing to the unwillingness of renters to take, before looking elsewhere, quarters where the common conveniences are not offered.

There is no reason why a negligible minority of property owners should be allowed to maintain a public nuisance that is costly to the taxpayers as a whole, costly to the renting community in health and life, as well as dollars and cents. Families whose bread is hard won and whose life battles are hard fought are, in a sense, the wards of their more fortunate neighbor, under the scriptural rule that every man is his brother's keeper and under the biblical injunction to succor the poor. They are also the wards of the community because their disablement shifts the burden of their support, automatically, to the taxpayers. Incidentally, they are human beings, and are entitled to such protection as will reduce the probability of husbands and fathers being deprived of their means of supporting their wives and children. The probability of their sons being driven into crime and their daughters into degradation is lessened where tenement laws give them protection.

Hatpin Ordinances.—The war against the predatory hatpin is assuming nationwide proportions. It is only another example of how even the adamant laws of style must yield to the restless march of social and economic evolution. Urban congestion, and especially congestion on the street cars and in the subways, is beginning to make the deadly hatpin impossible, and will end by making impossible the large hat which it supports, aids, and abets. The mind refuses to conceive the crinoline as ever again with us. Fashion will continue to display its atavistic tendencies; but fashion will have to revert to styles that go up and down, instead of horizontally. It can go back to the simple smock of the Middle Ages or the peplum of the Greeks, but it cannot go back to the Elizabethan ruff, the farthingale, or the many-storied hats of the type of the Leaning Tower of Pisa. The dressmaker of the future will have to work largely in one dimension.

Regulation of Wireless Telegraph.—Two bills regulating the use of wireless telegraph are before Congress. One provides that government messages should have precedence over all others, excepting distress signals from vessels. The bill also provides a form of Federal license for wireless stations. The government would, by its terms, be granted a practical monopoly of the air for wireless uses, except in cases of disaster. The Department of Commerce and Labor would be given power of supervision.

The other bill provides for a board of seven members to regulate the use of the air for telegraphic purposes. The board is to be composed of wireless experts, one each from the Treasury, Navy, and War Departments, three representing the wireless commercial companies, and one outside expert. This board is directed to frame legislation, and report to Congress in December.

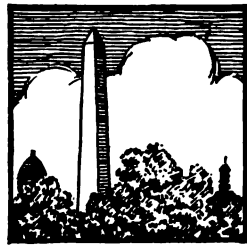
Commissioning Midshipmen.—The throwing out of the amendment to the naval appropriation bill, providing for the com-

missioning of midshipmen immediately upon graduation from the Naval Academy, perpetuates the injustice from which such graduates have long suffered. The grade of ensign corresponds to that of second lieutenant in the Army, which each graduate of the Military Academy, of West Point, receives immediately upon graduation after the four years course at that institution. Midshipmen in the Navy, after graduating from the Naval Academy, are compelled to do two years sea duty before they finally receive the coveted commission which makes them full-fledged officers of the Navy. Prior to that time they occupy an anomalous position. They are neither enlisted men, nor yet officers in the full sense of the term, although they perform the duties of officers, and are under all the responsibilities and penalties which are attached to the position of an officer, without any of the emoluments or privileges. This is an apparent and real injustice, which ought to be corrected.

Divorce Legislation.—Mismatched husbands and wives who flit to Reno, Nevada, for a few months, in order to get a divorce, will be subjected to much inconvenience if the next legislature, which meets in January, amends the present nickel-in-the-slot divorce law. Members of the two houses who will be called upon to consider the proposed change will be urged by leading men and women throughout the country, to assist in reforming the "easy" conditions that now exist. The bill extending the period that an applicant for divorce must actually reside in the divorce city, from six months to one year, is to be presented again, and will probably constitute the leading reform issue of the session. It was proposed last year, but did not reach a vote. The campaign is to be renewed with redoubled vigor at the coming session. Many notable men and women will make personal appeals to the legislators to remove the stain from the name of their state.



International and Foreign Notes



Uniform Bills of Exchange.—Charles A. Conant, delegate of the United States to a conference at The Hague on international bills of exchange, said, concerning the conference: "The subject is a highly technical one, but is of great importance not only to bankers, but to shippers of cotton, wheat, and other products, as well as to importers. Nearly all the American states have adopted the negotiable instruments law in substantially the same form in which it has been adopted in Great Britain and her dependencies. The conference is for the purpose of securing a nearer approach to uniformity than now exists in respect to certain matters where there is now conflict or uncertainty, as in the form and time of protest. The subject is a broad one, and I hardly expect to see a complete code adopted, but any step which adds to the security of bills, and diminishes the opportunity for fraud or misunderstanding, will be of benefit to international commerce."

White Slave Agreement.—The international White Slave Congress, which has been in session in Paris, decided to draw up immediately an international agreement for the establishment of a bureau in each country, in order to make easier the suppression of this traffic. Under this agreement the circulation of objectionable literature will be stopped as soon as possible, according to the local laws of the various nations. The arrangement is to go into effect as soon as it has been approved by the different governments.

Mediation Accepted by Peru.—The government of Peru has formally accepted, without reserve, the mediation of the United States, Brazil, and Argentina in the boundary dispute between Peru and Ecuador.

To Make Laws for the Air.—The first International Congress on Aerial Navigation was recently held in Paris, at the Foreign Office. M. Millerand, the Minister of Public Works, in his speech inaugurating the session, said the work of the congress was essentially diplomatic, as the advent of aeroplanes and dirigible balloons had given rise anew to threats of conflicts of not only private and public nature, but also of national interest to the different states. He concluded by saying that France regarded it as an honor to entertain the members of the first congress of this kind. The aim of the conference is to prepare international legislation in regard to aerial navigation. All the European Powers were represented at the congress.

Government Aid to Consumptives.—Under legislation enacted in 1905 the Danish government pays three fourths of the expenses of all poor persons who desire to be treated in tuberculosis sanatoria. When the hospitals under construction are completed, Denmark will have one bed in tuberculosis hospitals or sanatoria for every 1,200 inhabitants, a fact which will mean that the length of treatment can be considerably extended. In the United States there is one bed for every 4,500 inhabitants.

Japan's New Land Law.—The recently adopted land ownership law, restricting the ownership of land in Japan to such foreigners as come from a country which extends similar privileges to Japanese residents, was promulgated recently. The operation of the Japanese alien land ownership law, it is said, will not materially change the status of Americans in Japan, in the matter of land ownership. Under the terms of the treaty of 1894 citizens of each country may own or hire and occupy houses,

manufactories, warehouses, shops, and premises in the country of the other, and may lease land for residential and commercial purposes; but the treaty does not confer rights to own or hire agricultural lands.

Several states of the Union specifically prohibit foreigners from owning land within their borders. In Oklahoma it is prohibited altogether. Other states allow naturalized aliens to own land, and those who have declared their intention to become so. This is also the law in the District of Columbia. Nevada makes no restriction as to foreigners, except Chinese, who are not permitted to own lands in that state. Some of the states, including Indiana and Iowa, limit the amount of land an alien may own to 350 acres. In South Carolina the limit is 500 acres, and in Pennsylvania 5,000. In New York and Texas the laws are similar in their effect to the law recently passed by the Japanese Diet, allowing aliens to own lands if reciprocal rights are granted by the country from which they came.

Death of John A. Kasson.—John A. Kasson, former United States minister to Austria, died recently at Washington, D. C.

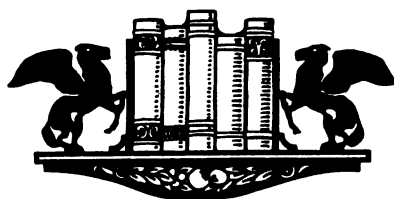
John A. Kasson had been prominent in public life since the days of the Civil War. He was a colleague of Garfield when the latter was the Republican leader in the House of Representatives. He later became minister for the United States to Austria, and later still, minister to Germany. Among his most distinguished achievements was the successful negotiation, in collaboration with the late William Walter Phelps, of the tripartite-treaty between America, Great Britain, and Germany, which settled the dispute

among the three countries as to the ownership of the Samoan Islands.

President McKinley appointed him a special plenipotentiary to frame the various reciprocity agreements with foreign nations under the terms of the Dingley tariff act. Mr. Kasson wrote many essays and some larger works, among the latter a history of the formation of the United States Constitution and the history of the Monroe Doctrine. He was born in Vermont, but while still a young man moved to Iowa.

Death of Leader of French Bar.—Henri Barboux, the famous lawyer and member of the Academy, is dead. He was born in 1834. Maitre Barboux is probably best known to Americans through his share in the Hart McKee divorce case in Paris in 1908. He was counsel for Mrs. McKee, who had been Mrs. Hugh Tevis. He was pitted against the famous Maitre Labori, the defender of Dreyfus. They fought a drawn battle, the court granting divorces to both parties.

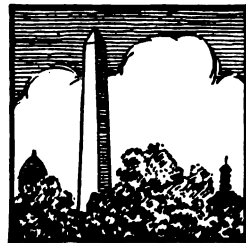
He was born at Chateauroux, September 24, 1834. He was educated for the bar, and soon acquired celebrity as a pleader. He figured prominently in the Panama scandal cases, in the litigation over Sara Bernhardt's desertion of the Theatre Francais, and in practically all the great trials of the last half century, in which the principles of the commercial law have been involved. He was an advocate of the Cours d'Appel, a position somewhat equivalent to that of a lawyer practising in the Supreme Court of the United States. In 1908 he was chosen a member of the French Academy as the best living exponent of French forensic eloquence. He was for sometime president of the French Bar Association and vice president of the Prison Association.





Bar Associations

You are cordially invited to send us items of interest pertaining to your Bar Associations.



Alabama.

The Alabama State Bar Association will convene at Mobile on July 14th and 15th.

Arkansas.

A Little Rock (Ark.) Bar Association was recently organized at a meeting of Little Rock attorneys in the supreme court rooms. John M. Moore was elected president, John Fletcher vice president, and Roscoe Lynn secretary. A constitution was adopted as written by Ashley Cockrill. The object of the association as set forth in the Constitution is to uplift the bar of Little Rock. Admittance to the association can be gained only through a nominating committee.

Colorado.

The Colorado State Bar Association holds its annual meeting at Colorado Springs on July 1st and 2d.

Indiana.

The Indiana State Bar Association will meet at Indianapolis on July 7th and 8th.

Iowa.

The Monroe County (Iowa) Bar Association held a meeting in the offices of Mabry and Hickenlooper, and chose the following officers for the ensuing year: President, T. B. Perry; Vice President, D. M. Anderson; Secretary, W. E. Giltner; Treasurer, Thomas Hickenlooper.

A committee consisting of J. T. Clarkson, J. R. Price, and D. M. Anderson was named to select a date and prepare for the annual banquet.

Kentucky.

It is announced that the Kentucky State Bar Association will hold its annual meeting at Middlesboro on July 12-14.

Louisiana.

The Louisiana Bar Association convened at Baton Rouge on May 20-21. The address of welcome was made by Mayor Jules Roux, on behalf of the city, while Judge T. Sambola Jones did a like service for the bar of Baton Rouge, both speeches being responded to by Hon. H. Garland Dupre, on behalf of the association.

The meeting then plunged right into the subject for debate,—the appellate procedure bill,—and while there seemed to be a general sense that under present conditions the procedure was not ideal, still it was clearly evident that the meeting did not believe that the proposed bill would better conditions. The report and bill suggested by the committee on jurisprudence and law reform was read by Solomon Wolff. Addresses upon the proposed bill were made by Joseph P. Blair, of New Orleans, Judge E. W. Sutherland, of Shreveport, Hon. George H. Terriberry, of New Orleans, E. B. Dubuison, of Opelousas, and Pierre Crabites, of New Orleans. All the speakers agreed in saying that the complaint was not with the members of the court, which was characterized as a hard-working, industrious, conscientious body, but with the fact that the present mode of procedure placed too much work on them.

The principal address was given by Archibald R. Watson, corporation counsel of New York city, upon "Some of the Problems and Responsibilities of Municipal Government."

Saturday afternoon, May 21st, was devoted to the address of the president of the Louisiana Bar Association, Hon. E. H. Randolph, of Shreveport, and to the reports of standing committees.

The meeting closed on Saturday night with a banquet at the Istrouma Hotel.

Honorable E. H. Randolph acted as toastmaster; Lieutenant Governor P. M. Lambremont spoke on "The Lawyer as a Public Official;" Archibald R. Watson's subject was "The Lawyer from the Metropolis;" Judge Frank A. Monroe's theme was "The Lawyer as a Justice;" Thomas D. Flynn delineated "The Lawyer Who is Trying;" Judge I. D. Moore's topic was "The Lawyer Who has been Tried," and R. L. Tullis discussed "The Lawyer at the Capital."

Maryland.

The Maryland State Bar Association will convene in annual session at Hot Springs, Virginia, on July 26-28.

Missouri.

The Missouri Bar Association will meet at Excelsior Springs on July 20-21.

Pennsylvania.

The sixteenth annual meeting of the Pennsylvania Bar Association was held at the Hotel Cape May on Tuesday, Wednesday and Thursday, (June 28, 29 and 30. Gustav A. Endlich, Reading, Pennsylvania, delivered the president's address June 28. The annual address was delivered the same evening by Honorable James Pennewill, Chief Justice of Delaware, on "The Layman and the Law."

Papers, followed by a discussion of each paper, were read as follows: Wednesday, June 29, by Hampton L. Carson, of Philadelphia, on "The Genesis of Blackstone's Commentaries and Their Place in Legal Literature," illustrated by an exhibition of legal classics, portraits, autograph letters, and original documents, including Blackstone's commission as a judge, his appointment as King's counsel, notes from the Commentaries, the original first edition, English; the first American edition, the first illustrated edition, etc.; on Thursday, June 30, H. Frank Eshelman, of Lancaster, Pennsylvania, spoke on "The Constructive Genius of David Lloyd in Early Colonial Penn-

sylvania Legislation and Jurisprudence, 1668-1731."

The sixteenth annual banquet was held at the Hotel Cape May at 7:30 p. m. on Thursday, June 30. Responses to toasts were given by Governor Stuart, Chief Justice Pennewill, Governor Fort, of New Jersey, and others.

Tennessee.

At the recent meeting of the central council of the Tennessee State Bar Association, it was decided that the annual meeting of the State Bar Association, which was scheduled to take place in Memphis, should be postponed so as to accept the invitation of the Chattanooga Bar Association to hold a joint meeting with the American Bar Association, which will meet at Chattanooga during the latter part of August and the first of September. The central council fixed the meeting on August 29, one day in advance of the first business session of the American Association, and after the first day the State Bar Association will act as hosts, with the Chattanooga Bar, in entertaining the American Association.

In addition to the regular business session of the first day's meeting, the State Bar Association will be addressed by Colonel W. A. Henderson, general solicitor of the Southern Railway Company, who will speak on the question, "Fees of a Tennessee Lawyer."

Texas.

The annual meeting of the Texas State Bar Association will be held at San Angelo, on July 5-6.

Washington.

The Washington State Bar Association will convene in annual session at Bellingham on July 28-30.

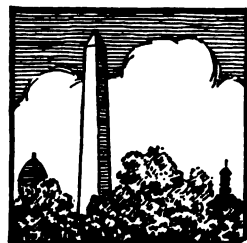
West Virginia.

The West Virginia State Bar Association will meet at White Sulphur Springs on July 14-15.



Law Schools

Devoted to the interests of Law Schools and
their students the coming leaders
of the American bar.



American Central Law School.

A new department in the study of law has been established by the American Central Law School of Indianapolis, which opened a legal dispensary, through which the deserving poor of the community will receive gratuitous advice and assistance in regard to their legal rights, in cases arising in good faith. The dispensary has received recognition at the hands of Judge Stubbs, of the juvenile court. Arrangements have been made by which members of the dispensary will be in attendance at the court to assist in examining the witnesses and in presenting the law. In the absence of an attorney representing the state, such member will assist in the prosecution. When the commonwealth is represented, and the defendant is not, and is unable to employ an attorney, the dispensary member will appear for him. These appointments are without remuneration, and each member will continue to serve about a month, when another will take his place.

University of Chattanooga.

Few classes are as cosmopolitan as the senior class of the University of Chattanooga Law Department, with its representation from seventeen states of the United States, and from Russia and Porto Rico. The class, composed of forty-five graduates, received their diplomas and the degree of LL.B., at the general commencement of the 'varsity, in the Albert Theater.

Chicago Kent College of Law.

Judge Edmund W. Burke, in an address at the annual banquet of Chicago Kent College of Law, in the La Salle Hotel, given in honor of the graduating class of 1910, spoke of "The Tomorrow," and advised the class to read the

newspapers and keep close knowledge of current events. "Read the newspapers all the time," he said, "not any particular part, but the things that touch on current events. They are our greatest educators, and if you have to choose between your Blackstone or other pleasures, take the daily newspaper first."

Detroit College of Law.

The annual oratorical contest of the Detroit College of Law was held at Y. M. C. A. Hall. Six orations were given. The winner of the first prize, a gold medal offered by George F. Monaghan, was John Sloan, 1911. His subject was "Political Parties and Partisanship." The second prize, a gold medal offered by Phillip McHugh, was won by Walter Gehrke, 1912, his subject being "Logan, Nature's Nobleman." A large audience greeted the orators, and the contest was one of the most successful in the history of the college.

Fordham University School of Law.

The last of the series of public lectures held by the Fordham University School of Law, during the academic year, was given by Honorable Charles E. Littlefield, who spoke upon "The Law in Relation to Labor Unions."

University of Georgia.

Judge W. A. Newman made an address to the students of the senior and junior classes of the Law Department of the University of Georgia, on "Federal Procedure." After discussing this subject at length, Judge Newman digressed for a bit, and talked on "Professional Ethics" in the courts, and gave the young lawyers some valuable points on this important subject.

Judge Newman has been kind enough each year, during the session of the United States court, to deliver a talk to the law students, and they look forward to his address each year with great interest.

Hastings College of Law.

Twenty-three young attorneys, constituting the graduating class of 1910 of Hastings College of Law, gathered at the banquet board, full of good cheer and college spirit. The dean and the professors were the guests of honor.

Harry I. Stafford made an excellent toastmaster. Toasts were responded to by Theodore Wittschen, Edward I. Barry, Gustave Barry, and Albert Picard. Original poems, dedicated to the class, were read by Andrew R. Schottky and O. C. Woodburn. Professor Brann and Dr. Taylor complimented the class upon its excellent showing.

Indiana Law School.

The annual commencement exercises of the Indiana Law School were held in the auditorium of the Indiana Pythian building. Daniel Wait Howe addressed the graduating class, taking as his subject "The Young Lawyer." He said that honesty was an absolute necessity in the practice of law, and no matter how successful one is, it must not be at the cost of character. No profession has a higher sense of duty or a higher moral standard, he said, than the legal profession.

Addison C. Harris, president of the board of trustees, presented the diplomas. Arthur Raymond Robinson, the class valedictorian, in his address traced the history of the development of law, and paid a tribute to the faculty of the law school.

Mr. James M. Ogden, lecturer in the Indiana Law School and author of Ogden's Negotiable Instruments, at the annual banquet of the alumni association, defined the duties of a lawyer in the following "ten commandments:"

"Be loyal to the interests of the client whose cause you have championed, and in his cause be guided by high moral

principle. Do not let the amount of your fee determine the amount of your industry.

"Neither underestimate nor overrate the value of your advice and services in your client's behalf.

"Be honest with, and respectful to, the court.

"Do not depend on bluff or trick or pull to win a case, but depend on thorough preparation.

"Give a measure of your best legal service to such public affairs as may best serve your community. Remember also to protect the defenseless and oppressed.

"Never seek an unjustifiable delay. Neither render any service nor give any advice involving disloyalty to the law.

"Be friendly with and keep faith with the fellow members of the bar; publish their good characteristics rather than their shortcomings. Especially be on friendly terms with the young man starting in the legal profession, and, if necessary, inconvenience yourself in order to encourage him.

"Do not discuss your cases with the court in the absence of opposing counsel.

"Avoid the 'easy-come,' 'easy-go' method with your finances. Bank on no fee until paid.

"Keep up regular habits of systematic study of the law. Acquire special knowledge in some one of its branches. Remember the law is a jealous master."

Jefferson School of Law.

Commencement exercises of the Jefferson School of Law were held at Macauley's Theater, and twenty-one young men of the school were launched into the legal profession.

The chief address was delivered by the Honorable James Breathitt, Attorney General of Kentucky. Judge Breathitt's remarks consisted mainly of advice to the graduates as to how to become successful in the practice of law. He created a laugh when, in urging the young lawyers to use wisdom in trying to have bills enacted, in the event any of them became legislators, he told of a bill a certain lawmaker wished to have made a law. "The bill read," said Judge Breathitt,

"that it be unlawful for any man to try to marry his widow's sister."

Robert G. Wulf, of the Jefferson debating society, George C. Burton, of the senior class, and Kendrick R. Lewis, representing the junior class, delivered addresses and were enthusiastically applauded by the large audience. Following the speechmaking, diplomas were presented, and medals were awarded by Judge Miller and Secretary Pennebaker.

University of Louisville.

Members of the 1910 graduating class of the Law Department of the University of Louisville celebrated the close of their scholastic course by a banquet at the Seelbach. The class also affected a permanent organization, elected its first staff of officers, and outlined plans for future activities. The officers are: President, Emmet O'Neal; vice president, E. F. Ames; secretary-treasurer, O. B. Fryrear.

Emmet O'Neal served as toastmaster at the banquet. The speakers were H. J. McMahon, O. B. Fryrear, E. F. Ames, and H. P. Binkley.

Suffolk Law School.

In the opinion of Dean Gleason L. Archer, expressed at the fourth annual banquet of the Suffolk Law School, the field for the lawyer to-day is as big as ever. Dean Archer stated that there are more men studying law in Massachusetts than ever, and that this increase is due to a larger population and a demand for knowledge of the law in business. Other speakers were Hon. Arthur W. Dolan and Ex-Mayor Thomas J. Boynton, of Everett. Webster A. Chandler was toastmaster.

Leland Stanford Junior University.

The Law Association of Leland Stanford Junior University held its banquet at the Palace Hotel, San Francisco. President David Starr Jordan, of the University, Professor F. C. Woodward, head of the Law School, Judge G. H. Sturtevant, of San Francisco, C. M. Fickert, District Attorney of San Francisco, P. V. Long, City Attorney, and F. V. Keesling, of the San Francisco bar, responded to the toasts. About

seventy members attended. F. V. Keesling was elected president, and Mr. Borland, secretary-treasurer, of the association for the year 1910-11.

Notre Dame Law School.

Notre Dame continued its successful work in debates by defeating the Detroit College of Law. Since Notre Dame has been represented by a debating team, it has lost but one debate out of seventeen, that being to Georgetown last year. Later in the year its team defeated the victors at Washington in a return contest. This record in debating is unexampled in the history of American colleges, and the students are very proud of the record. The university was represented by James L. Hope, Paul J. Donovan, and George W. Sands, with Otto A. Schmid, acting as alternate. Harry J. Lippman, Antonio P. Entenza, and L. Gordon Brewer were the Detroit debaters, with Alvin W. LaForge acting as alternate. The question was "Resolved, That Federal legislation should be enacted establishing a central bank in the United States." Detroit College of Law spoke on the affirmative side of the question, and Notre Dame Law School upheld the negative argument.

The Temple University Law School.

The degree of Bachelor of Laws was conferred upon twelve graduates of the Law Department of Temple University at Philadelphia on Saturday afternoon, June 4th. The address to the graduates was delivered by the Rev. Dr. Newell Dwight Hillis, of Plymouth Church, Brooklyn. The Law School maintains a four years' course, since it has been found utterly impossible for most men to cover thoroughly in an evening school the different branches of the law in any less time. It is a notable fact that no graduate has failed to pass the bar examinations of any state.

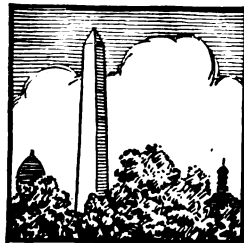
Wake Forest Law School.

The summer course in Wake Forest College School of Law began on June 6th, to continue till the supreme court examination.



New Law Books

An index of current legal
thought.



"Work-Accidents and the Law." By Crystal Eastman. (Charities Publication Committee, 105 East 22d Street, New York.) \$1.50 net.

This interesting and valuable publication forms part of the Pittsburgh Survey, made under the auspices of the Russell Sage Foundation. The purpose of the investigation, conducted under the guidance of the Foundation, into the conditions surrounding industrial wage earners has been two fold: To discover to what extent accidents can be prevented; and to see if the burden of them falls where in justice it should.

The volume is divided into three parts. Part I. considers "The Causes of Work-Accidents;" Part II. treats of the "Economic Cost of Work-Accidents;" and Part III. deals with "Employers' Liability." In the Editor's Foreword, Mr. Paul U. Kellogg, Director of the Pittsburgh Survey, observes: "It is my belief that this outspoken pioneer presentation will open up to the public consideration a situation which in our industrial districts has been weakly surrendered to inertia and trepidation. The lives of men, the fair living of families,—these are worth considering to the uttermost against the risks of work. These the industries of America waste without tally."

Gilbert's "Annotated New York Code of Civil Procedure." 2d ed. 1 vol. Buckram, \$10.

"The Modern Corporation: Its Mechanism, Methods, Formation and Management." By Thomas Conynghton. 4th ed. \$2.

"Actions by and against Corporations." By Joseph A. Joyce. Canvas, \$6.50.

Russell on "Crimes." 7th English edition. With Canadian notes. 3 vols. \$24.

"Index-Digest of Decisions under the Federal Safety Appliance Acts." Prepared at the direction of the Interstate Commerce Commission, by Otis Beall Kent. Copies of the Index-Digest may be procured from the Superintendent of Public Documents, Government Printing Office, Washington, D. C., at the actual cost of material and binding, 70 cents in cloth, and 40 cents in paper covers.

"The Modern Law of Evidence." By Charles F. Chamberlayne. 4 vols. \$7 per vol. Special price for orders received in advance of publication, \$6.50 per vol.

"Intoxicating Liquors." By W. W. Woollen and W. W. Thornton. 2 vols. Buckram, \$13.50.

"The Law of Intoxicating Liquors." By Howard C. Joyce. Buckram, \$7.50.

"Mining Law of Canada." By Alfred B. Morine, K. C. Half Calf, \$7.50.

Schouler on "Wills and Administration." \$6.

Recent Articles in Law Journals and Reviews

Bills and Notes.

"The Negotiable Instruments Law."—27 Banking Law Journal, 220, 316.

Brewer.

"The Late Justice Brewer."—14 Law Notes, 26.

"The Late Mr. Justice Brewer."—22 Green Bag, 265.

Campbell.

"Lord Chancellor Campbell."—35 Law Magazine and Review, 257.

Carriers.

"Contract Limitations of the Common Carrier's Liability."—8 Michigan Law Review, 531.

Commerce.

"Street Railways and the Interstate Commerce Act."—10 Columbia Law Review, 451.

Constitutional Law.

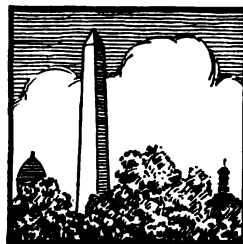
"Effect of Overruling Opinion of Court of Last Resort on Rights Ac-

- quired on Opinion Overruled."—70 Central Law Journal, 366.
- "The Fifteenth Amendment."—10 Columbia Law Review, 416.
- "The Canadian Constitution."—14 Law Notes, 27.
- Contracts.**
- "Equity and the Statute of Frauds."—21 Bench and Bar, 61.
- "Mercier v. Campbell and the Statute of Frauds."—46 Canada Law Journal, 273.
- Corporations.**
- "Executed *Ultra Vires* Transactions."—23 Harvard Law Review, 495.
- "Corporation Liens on Stock."—8 Michigan Law Review, 555.
- "Status of Preferred Stockholders in Bankruptcy Proceedings."—70 Central Law Journal, 330.
- Courts.**
- "Small Holdings Act and Courts of Justice."—42 Chicago Legal News, 316.
- Credits.**
- "Credits and Currency for an Emergency."—27 Banking Law Journal, 225.
- Criminal Law.**
- "Evils and Remedies in the Administration of the Criminal Law."—42 Chicago Legal News, 320.
- "The Prerogative of Mercy."—74 Justice of the Peace, 206.
- "Guilty, but Insane."—74 Justice of the Peace, 206.
- "Several Offenses on the Same Day"—74 Justice of the Peace, 219, 231.
- "Criminal Statistics 1908."—35 Law Magazine and Review, 312.
- Divorce.**
- "Uniform Divorce Legislation."—17 Case and Comment, 17.
- "Divorce Legislation."—22 Green Bag, 275.
- Equity.**
- "Equity and the Statute of Frauds."—21 Bench and Bar, 61.
- Evidence.**
- "The Evidence of Prisoners in England."—42 Chicago Legal News 315.
- "Legal Presumptions."—35 Law Magazine and Review, 265.
- Halsbury.**
- "Lord Halsbury, England's Grand Old Man."—17 Case and Comment, 20.
- Hughes, Mr. Justice.**
- "Sketch of."—17 Case and Comment, 1.
- Landlord and Tenant.**
- "Law of Leases in British India."—7 Madras Law Times, 99.
- Larceny.**
- "*Corpus Delicti* in Larceny."—31 Australian Law Times, 65.
- Monopoly.**
- "Criminal Conspiracies in Restraint of Trade at Common Law."—23 Harvard Law Review, 531.
- Municipal Corporations.**
- "The Various Forms of Commission Government."—70 Central Law Journal, 384.
- "Business Government for Cities."—17 Case and Comment, 4.
- Patents.**
- "The Patents and Designs Act 1907."—35 Law Magazine and Review, 289.
- Pleading.**
- "Judgment on the Pleadings on Motion."—21 Bench and Bar, 53.
- Principal and Agent.**
- "The Liability of an Undisclosed Principal. I."—23 Harvard Law Review, 513.
- Real Property.**
- "The Land System of New Zealand."—35 Law Magazine and Review, 279.
- Taxes.**
- "The Income Tax Amendment."—10 Columbia Law Review, 379.
- Uniform Legislation.**
- "Uniform State Laws."—42 Chicago Legal News, 314.
- "The Unification of American Law."—22 Green Bag, 267.
- "Judge Gibbons' Proposed Amendment: A Plan to Promote Uniform Legislation."—17 Case and Comment, 14.
- War.**
- "The War Office in Modern Times."—35 Law Magazine and Review, 269.
- Waters.**
- "Liability of Owner of Irrigation Ditch for Damages Arising from Its Construction and Maintenance."—70 Central Law Journal, 349.
- Witnesses.**
- "Art in Direct Examination."—17 Case and Comment, 8.



Quaint and Curious

Odd legal incidents gleaned from modern chronicles.



Edible Evidence.—In its zeal to absorb all the facts in the case, a jury in the district court at Salt Lake City not only nullified its own verdict of guilty, but made it impossible for the prosecution to make out a case before another jury. A druggist was on trial for selling liquor without a license. While deliberating, the jury sent for the exhibit, a flask of whisky. When it was returned to the court room, Judge Lewis noticed that it was empty. He reprimanded and dismissed the jury, and notified the defense that a motion for a new trial would be granted. The motion was made, and the state will have to dismiss the case for lack of its chief evidence.

On the same day at Atlantic City New Jersey, police officials were forced to withdraw a charge of thieving after they discovered the prisoner had eaten the evidence. The patrolman claimed that he caught the accused stealing pies left by a baker on the doorstep of a Chelsea cottage, but on the way to the station house the prisoner calmly ate the pies, and left no visible signs of the theft. Lacking evidence, Recorder Keffer offered to allow the man to go if he would leave the city, and the proposition was gratefully accepted.

Mystery of Mysteries.—What is hash? This all important question has been put to the learned Supreme Court of the United States. Regrettable to say, the mystery remains unsolved, the question is unanswered. The Supreme Court, almost omniscient, usually plain spoken and decisive, sidesteps and decides negatively. "Hash is not merchandise."

The wise justices are asked if a certain New York city restaurant company is amenable to the national bankruptcy law, and answers it is not because it is "not engaged principally in trading and mercantile pursuits." Consequently a

restaurant keeper is not a merchant; the hash and the other more-or-less-edibles he sells are not merchandise.

With all due respect to the United States Supreme Court, it must be said that the justices lost an opportunity to make themselves immortal. Worse, their evasive decision fills the lay mind with doubt of its accuracy. A collar button, a pair of scissors, and other articles often found in hash are all merchandise. Better had the Supreme Court answered: "Hash is a diversified, variegated conglomerate, manufactured synthetically and full of the unexpected." That sounds better, and is not negative at least; is accurate.

The truth will yet be known. Daily the servitors in the least pretentious eating-houses come perilously near telling. For if you go to a very cheap restaurant and order hash, you will hear the tough waiter shout your order to the cook: "One review of reviews!" Or perhaps the dialogue is in this form: "Hash," says a customer. "Gentleman wants to take a chance!" shouts the waiter. "I'll have hash, too," says the next customer. "Another sport!" shouts the waiter.

Pudding, Pastry, and Prunes—An extremely interesting question relating to one of the mainstays of the American table, says the Democrat and Chronicle, has just come before the appellate division of the supreme court, sitting in New York, for judicial determination. A man sublet part of his restaurant, with the understanding that he was to retain the sole right to sell pastry. The defendant, he alleged, violated the agreement by selling rice pudding and prunes. The court upheld his contention that rice pudding is a pastry, but dismissed the complaint as to prunes.

We suspect that the average housewife will not entertain a very flattering

opinion of the culinary knowledge of a court that says rice pudding is pastry. We trust that we are conveying no contempt of court in declaring strongly that we should not care for that kind of rice pudding. We defer becomingly to—

“Poetic Justice, with her lifted scale, Where in nice balance truth with gold she weighs, And solid pudding against—” the defendant in the case. Presumably, learned judges may at their discretion override dictionaries and a proper taste in desserts. Besides, we remember that, before the tribunal of the tariff, frogs’ legs have been put in the classification of dressed poultry. But we are not concerned about that here.

Along with the rice pudding affirmation by the court runs the deduction that prunes are not pastry. With this line we concur, though they do on occasion bake tastily into flaky crusts. Authority, Dickens, J., case of “Little Dorrit” et al.: “Papa, potatoes, poultry, prunes, and prism, all very good words for the lips,—especially prunes and prism.”

The court’s attitude as to prunes was sound and unassailable, and that is the overshadowing issue. It might have held that rice pudding was a fluid and should be drunk through a straw, or a medicine to be administered in capsules, without in any way endangering the stability of our institutions. America is not Asia. The case of prunes is different. It is most important that the usefulness of the prune shall not be fettered, curtailed, hopped, or bound down within the narrow limits of a judicial definition. It is the one unique product of nature that in thousands of homes in our northern climate bridges over the gulf between peaches and cream and strawberry shortcake. It is as much of a fixture in the scenery of the boarding-house landscape as the time-honored caster. It can be regarded either as a sauce or a vegetable side dish, a delicious dessert or an appetizing *entrée*. It fits in with any course. It can be served for breakfast, lunch, or dinner.

The learned court took the wise course. To have defined the prune as pastry would have robbed it of its chief glory, destroyed its commercial value in a large measure, and reduced it to the prosaic level of “pie timber.”

Judge’s Arctic Circle Circuit.—Judge Noel of the judicial district of Athabasca, has gone on the most northerly circuit ever undertaken by a Canadian judge, accompanied by a full retinue of court officers. Before he gets back he will hold court at Ft. McPherson and Herschell Island, both of which are within the Arctic Circle. From Edmonton he goes by train for the first 100 miles, then he takes a canoe, and, unless he makes the schedule to the day, he will return by dog train. With Ft. McPherson as his objective, he will follow the Mackenzie from its source in the Great Slave Lake to a point a little more than 100 miles from the mouth, from which it discharges its waters into the Arctic Ocean.

It will be late in the year before the judge will be able to reach the other points he proposes to visit, namely, Ft. Vermillion, Peace River Crossing, and Lesser Slave Lake, where he is to hold court. If the route as proposed is followed, 7,000 miles will have been covered before the trip is concluded.

A Judge in Papua.—Chief Justice J. H. P. Murray, lieutenant governor of Papua, who is coming to England for a twelve-month holiday, says the London Chronicle, may be called the *cadi* of the Empire. Papua is only in a primitive stage of civilization, and when Chief Justice Murray goes on circuit he generally holds his court seated in the protecting shade of an equatorial tree. There are still some cannibals and head hunters in Papua. These perils, with malarial fever and a torrid sun, make the life of a judge in Papua not altogether enviable.

An Up-to-Date Brief.—The supreme court of California is said to have cited an attorney for contempt, because he used George Ade’s slang in preference to the language of Blackstone in a brief recently submitted to the learned judges.

When the court met *en banc* one of the justices took up the brief, and began to read it aloud: “Then the state court butts in to the game,” he read in an amazed tone. “Beg pardon, I didn’t follow,” interrupted one of the learned associate justices. “Then the state court butts in—” “My gracious,” exclaimed a

justice, "did Blackstone ever use such language?" "If my memory serves me," suggested Justice Melvin, "it sounds like a newer master, George Ade I believe his name is."

The justice who was reading the brief continued: "Then a state court butts into the game, and when it has gotten its butter going it is unable to stop, but continues with all the judicial solemnity of an owl. Its actions would doubtless pass muster in a circus or a moving picture studio, but certainly do not comport very well with the dignity and caution—" "Dignity and caution, does he say—sacrilege," muttered a learned judge. "But go on; we must get this nightmare over. And they talk of abolishing capital punishment."

The reading of the brief was continued: "Do not comport very well with dignity and caution and evenness of mind popularly believed to be personified in one who wears the judicial ermine, and is presumed to know the law and to administer it."

There was a general judicial gasp *en banc*. "The decision is a peach," continued the reader. "What!" exclaimed a learned judge. "What!" "In the vernacular," exclaimed Justice Melvin, "the word 'peach' signifies anything rare, pretty,—I gather that it is used here in an ironical sense."

"Said rotten decision," continued the reader, "was the rottenest decision that ever disgraced the records of any court, for it wiped out the entire story of his perfidy. It is a raw decision."

"That, I fancy, is another colloquialism," asserted Justice Henshaw. "The said judgment," the brief read, "is one of the wonders of the legal world." "It is a finding not only frivolous, but false as well, and was intended simply as a cloak to cover more villainy."

There were phrases that never before had found their way into the pure lexicon of the supreme court. "The decision was putrid."

There was sarcasm, too. "The judg-

ment was the conclusion of a sapient court, of massive brains, a masterpiece of judicial wisdom."

And all this the supreme court of California declared to be "scandalous, disgraceful, insulting, and a contempt of court."

Ita Lex Scripta.—In the session laws of South Dakota for 1909, chapter 139, is a resolution proposing an amendment to the Constitution of the state, to be voted upon at the next November election, which, after providing that the debt of any county, city, town, etc., shall never exceed five per centum of the assessed valuation of the taxable property therein, proposes in one of the provisos the following:

"That any county, municipal corporation, civil township, district, or other subdivision may incur an additional indebtedness not exceeding ten per centum upon the assessed valuation of the taxable property therein for the year preceding that in which said indebtedness is incurred, for the purpose of providing *water and sewerage for irrigation, domestic uses, sewerage and other purposes.*"

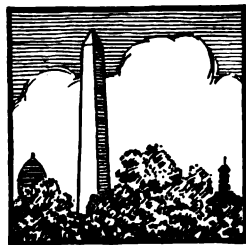
The Deadly Bargain Counter.—A mercantile firm is held in *F. W. Woolworth & Co. v. Conboy*, 170 Fed. 934, not to be liable to a customer attracted to its place of business by a special sale, and who was forced, by the crowd besieging the bargain counter, down the entrance to a stairway leading to the basement, and injured.

Amazon Invokes Code Duello.—An elderly woman residing in Louisiana is said to have recently challenged a woman of the same age to a duel, and stipulated shotguns as weapons. For this she was brought before the district court and fined for assault. "But my challenge was not accepted," she protested. The court held, however, that a challenge to a duel constituted an assault.



Judges and Lawyers

A contemporary record of the men who are or have been doing the world's legal work. Illustrations from photographs.



Samuel Untermeyer

A Leader at the New York Bar.

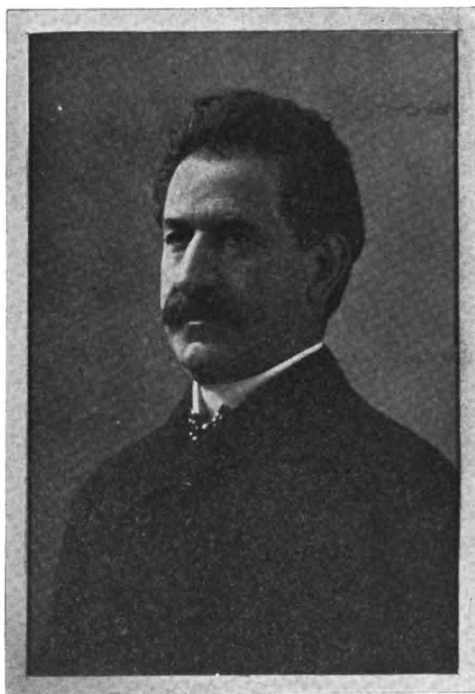
The sum of \$775,000, paid to Samuel Untermeyer, of New York, not long ago, is generally admitted to be the largest fee ever obtained by a lawyer in a single case in this country, and perhaps in all the world. The big fee was in compensation for three or four years' work in bringing about the merger of the Utah Copper Company and the Boston Consolidated Mining Company. Directors and stockholders of both companies voted unanimously that \$775,000 was not too much pay for Mr. Untermeyer's expert and long-continued services. Judges of the United States circuit court also approved the item by their action in dismissing an injunction suit in which the plaintiff stated the amount of the fee, and charged that it was excessive. In view of the fact that the merger will probably involve a capitalization of \$100,000,000, the fee is really modest. It amounts to less than 1 per cent. Lawyers in accident cases against corporations, on the contingent fee basis, usually ask 50 per cent of the damages recovered.

It will be remembered that Mr. Unter-

meyer was recently assigned by the court to defend Marie Auguste Crisanti, an Italian woman charged with murder, and that he successfully conducted the defense. In that instance he was awarded \$500 for a week's work, which amount

he presented his client upon her acquittal.

Mr. Untermeyer has modestly said that the same result would have been achieved if the accused had been defended by any other lawyer at the bar, of average skill and experience, provided he had the means and was willing to expend a moderate amount of time and a few hundred dollars in preparing the defense. But the fact remains that he magnanimously turned aside from highly profitable employments, to give his time, ability, and money in aid of a



SAMUEL UNTERMEYER

poor unfortunate.

Mr. Untermeyer has recently suggested that there ought to be attached to the courts, especially in the larger cities, a public defender, whose duty it will be to provide for the defense of those who are charged with crime, and who are too poor to employ counsel. In support of

this proposition he has said: "It is with sincere regret and reluctance that I assert that, save in rare instances, the modern prosecutor does not stand between the people and the accused. He and his assistants too often measure the success of their labors by the number of convictions they have secured. It is a false and brutal conception of duty, that is responsible for grave injustice, but it is none the less true that it exists. Under its influence the prosecutor becomes a partisan advocate, blind to the defense, unwilling to voluntarily expose the weakness of the people's case."

"Nowhere in our social fabric is the discrimination between the rich and poor so emphasized to the average citizen as at the bar of justice. Nowhere should it be less. In an ideal state of government the lines would be made to disappear here, of all places. Money secures the ablest and most adroit counsel, whose characters and reputations are powerful factors in their client's cause. Evidence can be gathered from every source, and all the legitimate expedients of the law availed of. The poor must be content to forego all these advantages."

Concerning which it may be observed that it is not at all certain that the ends of justice would not be best conserved if the state should take a hint from the county, and employ attorneys to defend all felonies, without regard to the financial status of the accused, and to the exclusion of private counsel. It is quite possible that the truth would be better disclosed in this way.

Jules E. Alford, who for twelve years, ever since the inferior criminal court was created in Mobile, has been its judge, died recently, at the age of thirty-eight years. Though a young man, Jules Alford wielded great power and influence as a judge, as a man, and politically. His court was unique and on the order of Judge Lindsey's court, although many of the offenders who passed before this man were grown-ups, instead of children. His methods were far-famed, and have been the subject of several magazine articles written by students of criminology and sociology.

Wyoming's Attorney General



HON. WILLIAM E. MULLEN

Hon. William E. Mullen was appointed attorney general of Wyoming in 1905, to fill a vacancy in an unexpired term, and so satisfactorily did he discharge the duties of this important position that he was re-appointed for a four-year term in 1907. In addition to his regular official duties he has acted, by appointment of the legislature of 1909, as a commissioner to revise, edit, annotate, and compile for publication the statute laws of the state, which have recently been published in a volume known as "Wyoming's Compiled Statutes 1910."

Mr. Mullen was born near Ottawa, La Salle County, Illinois, on July 25th, 1866. His family was among the very early settlers of the state. His boyhood years were spent on a farm. Later he became a clerk in a country store, and at the age of twenty he struck out for the West, and engaged in newspaper work. He read law, and was admitted to the bar in Nebraska in 1889. Thereafter he entered the Michigan University, and graduated from the law department in the class of 1893. He engaged in the practice of law at Sheridan, Wyoming, where he served as city attorney, and later as mayor.

Mr. Mullen is a member of the American Bar Association, and one of the commissioners on uniform state laws.

Judge Thomas Beer, aged seventy-eight, one of the most eminent jurists of Ohio, died at his home, in Bucyrus. Sixty years of his life were spent in the law. He was a member of the constitutional convention of '73, was elected twice a member of the general assembly, and made an unsuccessful race for the supreme judgeship.

William M. Mellette, of Muskogee, Oklahoma, died suddenly while walking to his office. Mr. Mellette was formerly United States attorney for the western district of Indian territory, and his duties compelled him to remove to Muskogee, which was headquarters for the old western district. He served in this capacity until the territorial government was discontinued upon the event of statehood. He then formed a partnership with Preston C. West, in Muskogee, for the practice of law, and this partnership was only terminated by the sudden death of Mr. Mellette.

Mr. William K. Jackson Jr., has been appointed prosecuting attorney for the Canal Zone. Mr. Jackson is a native of Florida, of the city of Jacksonville, and is a graduate of the University of Virginia. He is one of the youngest prosecutors in the employ of the government, being just twenty-three years of age. The appointment of Mr. Jackson to the position of prosecuting attorney gives general satisfaction to the bench and bar of the Canal Zone.

Judge John S. Keyes, the oldest judge in Massachusetts, and the senior member of the Middlesex bar, died at the Massachusetts General Hospital, in his eighty-ninth year. Judge Keyes was a native of Concord. He was born September 19, 1821, the son of John and Ann Shepard Keyes. He entered Harvard in 1837, and was graduated four years later, after which he took the course at the Harvard Law School. He was admitted to the Bar in 1844, and his law practice grew fast. He was selected to the state senate, serving for several terms. In 1853 he was elected sheriff of Middlesex county, holding this office for some years. In 1860 he was a delegate to the convention at Chicago where Abraham Lincoln was nominated for the presidency. In the course of a few months he was appointed by President Lincoln United States marshal. He served through the Civil War, and was reappointed by the President during the early part of his second term. He resigned in 1867. In 1874, when the district court of eastern Middlesex was established, he was appointed judge, where he had remained continuously since.

Utah's Attorney General

Hon. Albert R. Barnes, Utah's attorney general, was born in Indiana and bred in Michigan. He is the son of a Methodist clergyman. He graduated from the Academic Department, North-



HON. ALBERT R. BARNES

western University, of Evanston, Illinois, and in 1889 from the Law Department at Ann Arbor, Michigan. In the fall of that year he moved to Utah, and entered upon the practice of law at Salt Lake City. At first he entered the office of the firm of Brown & Henderson, composed of Arthur Brown, at one time United States Senator from Utah, and Judge H. P. Henderson, territorial judge of Utah under the Cleveland administration. Here he remained until 1903, when he entered into business for himself, and met with a marked degree of success.

Mr. Barnes was appointed deputy attorney general in April, 1907, and was elected to the office of attorney general in November, 1908. He has performed the duties of this important position in a most capable, effective, and praiseworthy manner.

He was among the number who recently attended the annual meeting of the National Association of Attorneys General, held in St. Paul, and was instrumental in securing the next annual convention for Salt Lake City.

James W. Covert, well known as a lawyer, died of pneumonia at the Hotel St. George, Brooklyn. He was born in 1842, and from 1870 to 1874 he was surrogate of Queen's county. In 1876 he was elected to Congress, serving two terms. For ten years, from 1882 to 1892, he was a member of the state senate. Since 1898 he had been an assistant corporation counsel.

Arkansas Attorney General



HON. HAL L. NORWOOD

At the recent annual meeting of the National Association of Attorneys General, held at St. Paul, Honorable Hal L. Norwood, attorney general of Arkansas, was one of the

principal speakers. He said: "Our lax administration of the criminal law is the disgrace of the civilized world. In Germany there are only 4.85 homicides per million people, per annum; in England only 10.15; in France only 14.22; while in the United States, as shown by the last census, there were 129.5. In other words, we are thirty times as homicidal as the German, and twelve times as homicidal as the Englishman. Why is this? We are not by nature more vicious than the German or the Englishman. The great majority of our people are of English or German blood, and under the same conditions would show an equal respect for human life.

"The reason is simply that the law is not enforced with us. Men will restrain their hunger for their brother's blood if they know that certain punishment will follow upon its shedding. You can see that in Canada. There a people living beside us, under substantially similar conditions, claims a rate of homicide lower even than Germany. The law is enforced with Canadians, and the desire to slay is restrained by the fear of punishment.

"Many causes concur to produce our maladministration of the criminal law, and one of them is the want of any real head for the legal department of the state.

"Prosecuting attorneys are usually good men, and as a rule able men, but in the turmoil of their practice, going from the circuit court of one county to another, trying cases by day and writing indictments by night, they do not have the time to prepare as they should the legal

side of their cases. The result is that many of their convictions are set aside for error by the appellate court, and we know how hard it is to convict on a second trial."

He urged "That many errors could be avoided by the attorney general by having a sufficient number of assistants, so that the prosecuting attorney might feel at liberty to call and advise with the office."

Attorney General Norwood was born in Sevier county, Arkansas, and attended the public schools of the county. He continued his studies at Hendrix College, at Altus, Arkansas, at the University of Arkansas, at Fayetteville, Arkansas, and subsequently in the Law Department of the Washington Lee University, at Lexington, Virginia. He was admitted to the bar in 1893, and was chosen a member of the lower house of the general assembly of Arkansas in the same year. He served as prosecuting attorney of the ninth judicial circuit for two terms. In 1898 he moved to Mena, Arkansas, where he engaged in a general practice. He served in the state senate during the sessions of 1901 and 1903. He was elected attorney general in 1908, since which time his official residence has been at Little Rock.

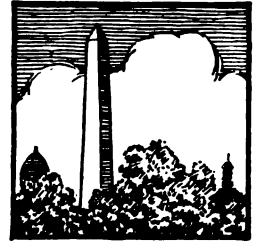
Mr. Norwood is a public-spirited citizen who has taken an active interest at all times in the upbuilding of his state and the community in which he has lived. He has given close and careful attention to all matters connected with the attorney generalship, and has been loyal to the interests of the state at all times.

Judge Samuel C. Wingard died recently at his home, in Walla Walla, Washington. He was eighty years old, and one of the most distinguished of the old pioneers. He went to Washington in 1870 to become attorney for the Northern Pacific, but had held the place but a short time when President Grant appointed him United States attorney for the territory. A little later he was made associate justice of the supreme court of the territory, and was reappointed by Presidents Hayes and Arthur. Judge Wingard was born in Pennsylvania. He graduated from Dickinson College in 1847, and later served in the Pennsylvania legislature, before going West.



The Humorous Side

Why not send CASE and COMMENT that funny story about the law or lawyer which you sometimes tell and which never fails to provoke a laugh.



Pointing with Pride.—John T. Fleming, an assistant state's attorney on Mr. Wayman's staff, was a member of the legislature a few years ago, and last week, when confessions of bribe-taking by present members of the general assembly were coming in about one a day, some of Mr. Fleming's associates were having fun with him on the basis of his past service as a lawmaker.

"I confess that I was a member of the legislature at one time," said Mr. Fleming to his baiters, "but I point with pride——"

"He points with pride," interposed Charley Furthman, after the manner of the chorus in light opera, "he's naught to hide."

"I point with pride," resumed Mr. Fleming, standing erect and swelling out his chest alarmingly, "to the statute of limitations."—Chicago Post.

The Judge's Status.—A mother-in-law was testifying in a St. Paul court the other day as to the cruel treatment which her son-in-law was accustomed to mete out to her daughter.

"It's not sufficient," said the lawyer, "to say that he used bad names. You must tell the court just the expressions that were used."

"I'll not say them," asserted the mother-in-law. "They're not fit to repeat to any decent man."

"Then whisper them to the judge," said the lawyer, and the court bent an attentive ear."—St. Paul Dispatch.

Modern Hercules.—The manager of the sideshow was before the bar for kidnaping.

"Yes, judge," he confessed solemnly, "in a moment of weakness I sneaked into the museum and carried the fat lady away in my arms."

"In a moment of weakness!" gasped

the judge, who remembered that the fat lady tipped the scales at 550 pounds. "Great Scott, man! What would you have done in a moment of strongness?"—Chicago News.

People are Different.—Chief Justice Taney, driving through the Tennessee mountains, once broke one of the shafts of his buggy. A small colored boy came riding by on a mule. The justice hailed him.

"Here, my boy," he said, "can you help me fix my buggy?"

"Sure, boss," answered the boy, and cutting a hickory withe, he soon fixed the shaft so that it was quite serviceable.

"Well, well," said the learned judge, "now why couldn't I have done that?"

"I dunno, boss," replied his "first aid," "unless some folks knows more than others."—Success.

The Assault.—"It is claimed by complainant that you assaulted him," said the judge.

"He lies, your Honor. I never touched him. Croucher and Willoughby picked him up and carried him to the pump. All I did was to work the pump handle."—London Express.

Unheard of Accident. "What's Thomson swearing so viciously about?"

"Why, he scheduled his property in order to bail one of his cronies out of jail, and the assessor somehow got hold of the document."

In a Tank Town.—"Well Hiram I see your son hez closed his law office and is drivin the station bus fer a livin'."

"Yes, he warn't a success at the law. It seemed he didn't have no knack fer sellin real estate."—Macomb (Ill.) Journal.

Effective on Either Side.—There was a prosecuting attorney in Texas whose methods were so dramatic and uniformly successful that he not only became the terror of evildoers, but an object of admiration, especially among the negroes. Upon retirement from office, he was at once much sought after by those charged with crime. The first two cases which he defended resulted in conviction, much to his chagrin. An old negro who had watched his prosecution in admiring wonder, and looked on with equal interest when he conducted the defense, accosted him just after his defeat, and said: "Mars' Earle, you sho is a wonder. No matter which side you's on they go to the Pen just the same."

Prevarication's Penalty.—Samuel Untermyer was being congratulated at the Manhattan club on his recent successful conduct of a murder case. The distinguished corporation lawyer modestly evaded all these compliments by the narration of a number of anecdotes of criminal law.

"One case, in my native Lynchburg," he said, "implicated a planter of sinister repute. The planter's chief witness was a servant named Calhoun White. The prosecution believed that Calhoun White knew much about his master's shady side. It also believed that Calhoun, in his misplaced affection, would lie in the planter's behalf.

"When, on the stand, Calhoun was ready for cross-examination, the prosecuting counsel said to him, sternly:

"Now, Calhoun, I want you to understand the importance of telling the truth, the whole truth, and nothing but the truth in this case."

"Yes, sah," said Calhoun.

"You know what will happen, I suppose, if you don't tell the truth?"

"Yes, sah," said Calhoun, promptly, "Our side'll win de case."

An Exhibit in the Case.—Two prominent Wisconsin attorneys were once trying a lawsuit on opposite sides. Mr. X had been making a good many sarcastic remarks at the expense of his opponent,

who finally appealed to the court for protection. "Now, Mr. X," said the judge, in a mollifying tone, "Mr. Y is not on trial." "No, your honor," replied X, "but he is on exhibition.

Expert Medical Testimony.—In the early days of Rice county, Kansas, a person was put on trial for murder in the first degree. The defendant claimed that in company with the deceased he had started for Ellsworth in a wagon, and before proceeding very far on their journey the deceased attempted to take the gun from the wagon, when, by some accident, it was discharged, causing the instant death of his companion.

Dr. F. was about the only physician at that time in that part of the country where the accident occurred, and his early education had been neglected. He was at once sent for, and made an examination of the body, before it was removed, and at the trial was called as a witness.

"Well, doctor, did you examine the body?"

"Yes, sir."

"State the result of your examination."

"Well, I went to where the body was, and found it lying in a northeast direction with the head near a stump."

"Where upon the body was the wound?"

"Well, the shot entered the head near the occi-occi-pari-well! just over the eye, and the blood had run down in an obloquy direction and coagulated in a cow track."

A Court Defined.—Two or three instructors at the Reserve law school have been laughing themselves sick over the answer made by a student in an examination not long ago.

The question was to define a court of law. Blackstone, who was a good deal of a legal authority in his day, gives as his definition, "A place where justice is judicially dispensed."

The student may have had that definition in mind. But here is what he wrote:

"A court is a place where justice is judicially dispensed with."—Cleveland Plain Dealer.

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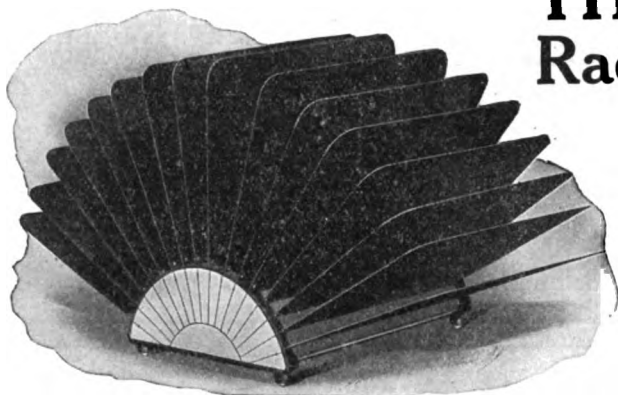
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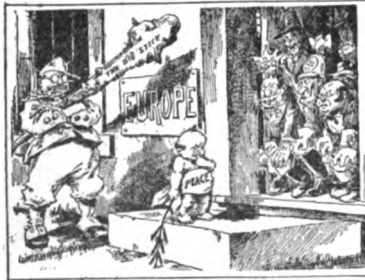
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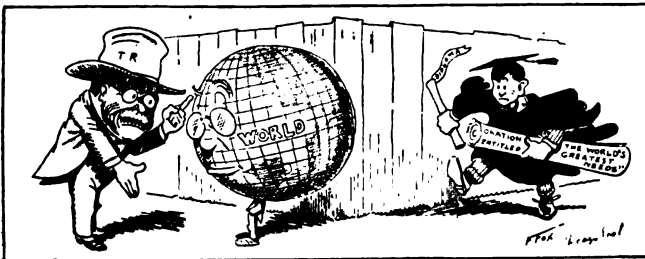
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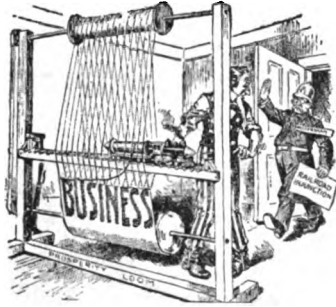
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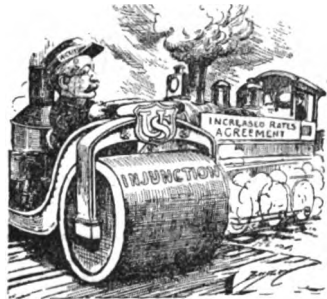
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THE LAWYER'S MAGAZINE



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Vol. 17 No. 3

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By FRANCIS L. WELLMAN

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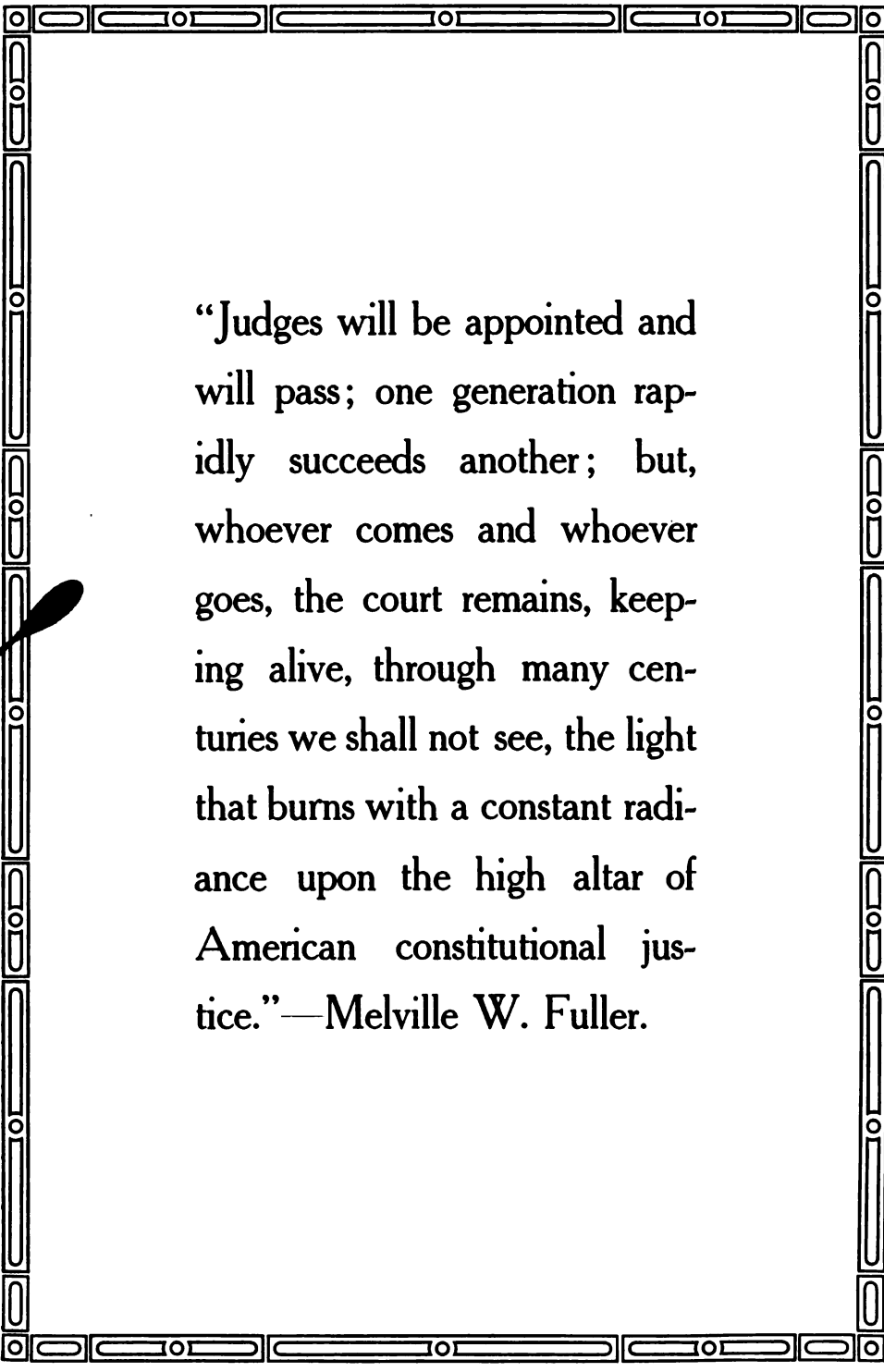
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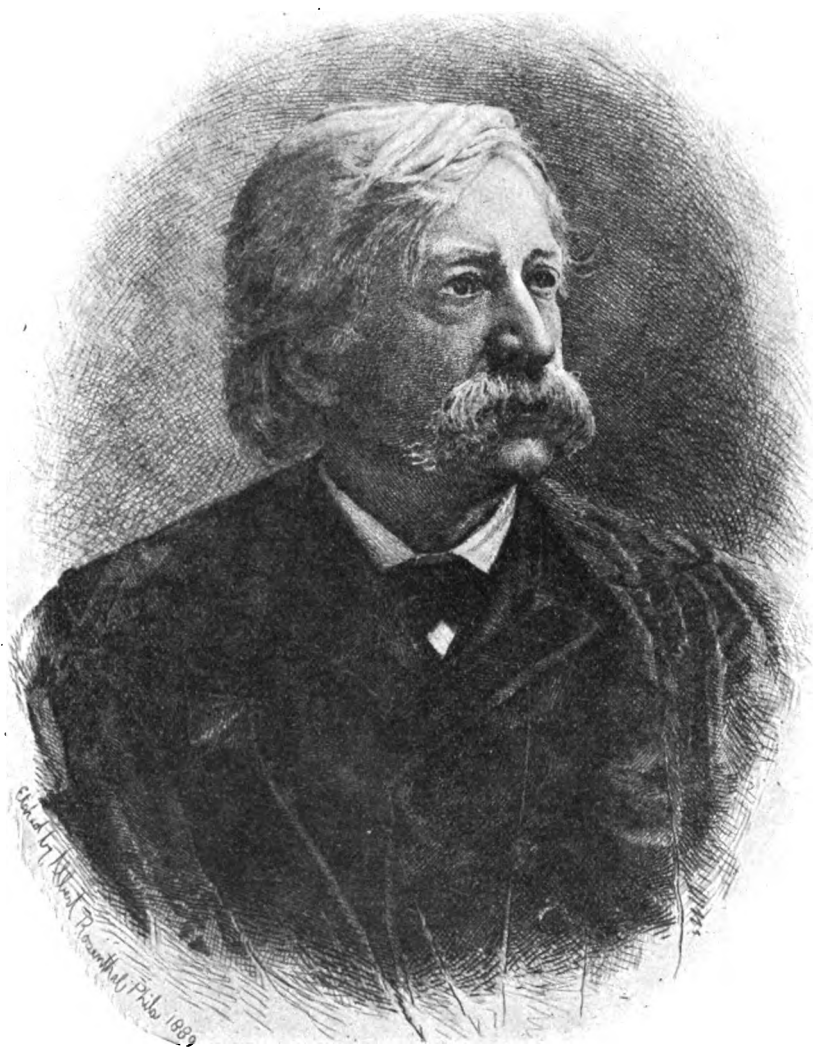
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Our Late Lamented Chief Justice

BY THE EDITOR



At dawn, on the nation's natal day, Death summoned the kindly, faithful man who for twenty-two years has served with honor as Chief Justice of the United States. It is a solemn moment in the life of the Republic when one Chief Justice passes and another is to succeed him. The Chief Justiceship is an office equal in many respects to the Presidency itself. There have been Chief Justices who have wielded a greater influence over the destinies of every individual citizen than any President, save two or three alone.

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and had theretofore offered him other appointments which he had declined. On the death of Chief Justice Waite, in 1888, President Cleveland promptly nominated Mr. Fuller for the vacant position. In accepting the place he gave up a law practice which netted him an annual income of \$30,000. The salary attached to the Chief Justiceship was at that time \$10,500.

His Standing at the Bar

Mr. Fuller had practised law in Chicago for thirty-two years. He was a lawyer's lawyer, one whom lawyers loved to consult. A man of absolute probity, he possessed the complete confidence of every lawyer at the Chicago bar.

One who knew him well says of him: "The late Chief Justice had one singular characteristic. I never knew him to speak ill of anyone. Moreover, he was a forensic orator of talent, brilliant and attractive as a speaker. Possessing a fine literary style, an eloquent delivery and a pleasing address, he was for years the representative whom the Chicago bar thrust forward when it wanted to do itself proud on any occasion of especial importance. It was Fuller, I remember, who represented us when we gave an imposing banquet and reception to Lord Chief Justice Coleridge, upon his visit to Chicago in 1886 or 1887."

His Manner and Appearance

Throughout his service, Chief Justice Fuller was noted for the dignity with which he filled the position. He preserved that manner when on the bench

or off it. Although small of stature, not more than 5 feet, 7 inches, his wealth of silvery hair and classic features made him a commanding figure wherever he appeared.

Behind the outward manifestation of the courtly gentleman, and the mild-mannered voice, which, in recent years, has been almost inaudible to those seated on the edge of the court room, was a tremendous force of character, a keen sense of justice and a capability for hard and persistent work wholly out of proportion to his years.

Important Opinions Rendered by Him

Among the many important opinions he rendered were the unconstitutionality of the income tax; the decision in the Danbury hat case that labor unions are amenable to the Sherman anti-trust law; and the decision denying the right of the state to tax any telegraph messages but intrastate ones. He held that the claims of a widow and her children to the insurance on the life of the husband and father are distinguishable from other claims against the estate, on the ground that it is public policy that a man should provide for his wife and children; he denied the right of a railroad to exempt itself from liability for its negligence in the shipment of goods; he wrote the opinion in *Leisy v. Hardin*, holding that a state could not interfere with the importation of intoxicating liquors nor with their sale while in the original packages. Another case of importance that came before him involved the tariff policy toward the Philippine Islands. In this, the Chief Justice was with the minority, contending that to regard the Philippines as outside territory was unconstitutional. In the Northern Securities decision, the Chief Justice was again with the minority. The position he took was not unexpected, in view of his general attitude toward the recent enlargement of Federal authority in business affairs.

His Literary Style

When it fell to him to prepare the decision of the court, he showed himself master of a lucid style which sometimes had even a literary quality. One of the best illustrations of this was the opinion he handed down in the case of *Hammond v. Hopkins*. He concluded his opinion by saying: "In all cases where actual fraud is not made out, but the im-

putation rests upon conjecture, where the seal of death has closed the lips of those whose character is involved, and lapse of time has impaired the recollection of transactions, and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence. The hourglass must supply the ravages of the scythe, and those who have slept upon their rights must be remitted to the repose from which they should

¶ "He was a great justice, and noted for his independence of thought and courage of action. His career entitled him to the gratitude of his fellow countrymen."

—President Taft

not have been aroused."

Delays Big Trust Cases

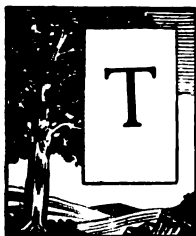
The death of Chief Justice Fuller means that the rehearing of the Standard Oil and Tobacco Trust and the Corporation Tax cases will be delayed a few months longer.

Remaking the Supreme Court

Fate is hastening the fulfilment of one of the campaign claims of 1908, that the President then selected would have the task of remaking the Supreme Court. Never before has so swift a succession of calls been made upon the Chief Executive for appointments to the highest court. One third of its membership has gone to the Great Assize since Mr. Taft became President. Vitally important questions are now and will soon be before this court for decision, and never before has a President been called upon to exercise the appointive power in a manner so directly affecting the national welfare through the rulings of the court of last resort.

Powers of Courts in Vacation

BY EDWIN S. OAKES



THE division of the year into term and vacation," says Reeves, in his History of English Law (Vol. 1, p. 332), "has been the joint work of the church and necessity. The cultivation of the earth and the collection of its fruits necessarily require a time of leisure from all attendance on civil affairs; and the laws of the church had, at various times, assigned certain seasons of the year to an observance of religious peace, during which all legal strife was strictly interdicted. What remained of the year not disposed of in this manner was allowed for the administration of justice." Blackstone (Com. Book III., p. 275) similarly describes the terms as "those leisure seasons of the year which were not occupied by the great festivals or fasts, or which were not liable to the avocations of rural business." And he gives, on the authority of an earlier work (Spelman of the Terms), the following account of their origin: "Throughout all Christendom, in very early times, the whole year was one continual term for hearing and deciding causes. For the Christian magistrates, to distinguish themselves from the heathens, who were extremely superstitious in the observation of their *dies fasti et nefasti*, went into a contrary extreme, and administered justice upon all days alike. Till at length the church interposed and exempted certain holy seasons from being profaned by the tumult of forensic litigations. As, particularly, the time of Advent and Christmas, which gave rise to the winter vacation; the time of Lent and Easter, which created that in the spring; the time of Pentecost, which produced the third; and the long vacation between Midsummer and Michaelmas, which was allowed for the hay time and harvest. All Sundays, also, and some particular festivals, as the days of the purification, ascension, and some others, were includ-

ed in the same prohibition; which was established by a canon of the church, A. D. 517, and was fortified by an imperial constitution of the younger Theodosius, comprised in the Theodosian Code."

That judicial business was restricted in England at an early day to certain seasons of the year is demonstrated by the *Mirroure of Justices*, a book compiled either in the last years of the thirteenth or the first of the fourteenth century, and purporting to be a memorial of the ancient laws of England, where it is said (Ch. III., § 8), "And note, there are three manner of times exempted from pleas, in which no parties sit in courts to give judgments, whereof two are by law, and the other at the will of the King." The two ordained by law are stated to be, first, the months of August and September, "which are assigned to gather in the fruits of corn," etc., and second, the feasts of the church and Sundays.

Institution of Terms of Court

The repute of having instituted terms of court in England forms part of the apocryphal halo surrounding various of her earlier rulers. "The learned Selden," writing in 1614, and probably relying upon Polidore Virgil and Holingshed, concurs with them in ascribing it to William the Conqueror; but subsequent investigators agree that such a division of the juridical year was already an existing usage at the time of the Conquest. It was more probably, like other national institutions, of gradual growth than of adoption in a completed form. In Herbert's *Antiquities of Inns of Court and Chancery* (p. 156), mention is made of laws of Canute and Edward the Confessor (who seem to have captured most of the credit for whatever of law there was in those shadowy days), forbidding ordeal and oaths on feast days and ember days, and at certain holy seasons. The most exact ascription of the institution of terms which has come to hand

is in a case in the court of King's bench, in 1676, rather chaotically reported in 2 Rolle, 443, from the law French of which the writer ventures, somewhat temerarily, to render the following extract: "Dodridge, Justice: Terms were to give and distribute justice (and for this the omission of a term in continuance is a delay of justice), and their commencement was in the time of the Saxon Kings before the Conquest. Thus, in Lambert, in his Antiquities, there is an act of Parliament made by the Saxons, and, as I suppose, by Edgar, who entered the monastery, the which act is for ordinance of days juridical," etc., describing the terms. Further on in the report another speaker, who may be conjectured to have been the Chief Justice, says: "It is true that the terms were observed in the time of the Saxon kings, as they are at this day; and I have a little book called *Gulielmum Conquestoris*, written by a hand of the time of Henry III, and there the terms are described by the vacations, as you have described them by themselves. There it is said Christmas, Harvest, Lent, and Whitsuntide are free from suits and business of the law, the one to garner the harvest, the others to serve God."

No Vacation in Chancery

The system of terms and vacations which governed the English law courts did not, however, apply to the court of chancery. This was probably due to the fact that the principal function of that court in its early days was the issuance of original writs, returnable in term time to the other courts, and not the trial of cases. Thus, in 21 Year Book, 4 Edw. 4, it appears that on account of a plague prevalent in London, the business of the King's bench and common pleas was, by royal writ, postponed to the term following; and it is stated that the exchequer did not sit for the trial of cases, but only for the purpose of transacting fiscal business, "and also the chancery was not adjourned, for the chancery is always open." In cases on its law, or, as it was sometimes termed, its petty-bag, side, and probably on its equity side, so far as the trial of causes was concerned, it accommodated itself to the usages of the

other courts. An interesting discussion of the powers of chancery in vacation, in which Lord Eldon took part may be found in *Crowley's Case*, 2 Swanst. 1, Buck 264. The notion that "chancery is always open" is of some practical effect in this country in determining the powers at chambers of judges vested with general equity jurisdiction.

Vacation and Term

In the United States, terms of court are sometimes controlled by legislative acts, and sometimes left to be fixed by the courts themselves, under power conferred by the legislature, as the exigencies of judicial business may require.

To speak of the powers of courts in vacation is, perhaps, to offend against preciseness. "There is no common-law court except in term time," an English judge has declared. Similarly, American courts have said: "In vacation the judge is not clothed with the character of a court;" and "It is only during term time that the judges are invested with their full judicial power." Such powers, then, as may be exercised by the judges of courts in vacation, must be conferred by constitutional or statutory provision, or be inherent in the office of judge.

An enumeration of the powers expressly conferred in the several states would here serve no useful end; but, while it is not purposed to enter upon a detailed discussion of the powers of judges in chambers, some account of such powers is germane to the present subject.

Powers of Judges in Chambers or Vacation

The origin of these powers is not known. "By long-established usage," says Chitty (Practice, Vol. III., p. 19), "each of the judges of the courts of King's bench, common pleas, and exchequer, has, at common law, and independently of any legislative authority, at his chambers exercised a very extensive jurisdiction over certain minor and practical proceedings, especially irregularities that arise in conducting an action or defense, and this as well in the vacation as during the four terms. It would be difficult if not impracticable to trace the inception of this practice. It has been

observed that probably it originated either in the overflow of the business of the full court in term, or the expediency of certain matters, probably much, of course, though sometimes obstinately disputed by the parties, being decided upon or transacted before a single judge, as well to avoid the expense of formal rules, as to prevent the important time of the court in banc being consumed in disposing of trifling matters; and in the vacation, from the absolute necessity for some tribunal having power to interfere and relieve from the consequence of the abuse of the process of the court, or of irregularities, as by illegal arrest, or execution under illegal, irregular, or insufficient proceedings, under which otherwise a party might continue in imprisonment, or his goods be irretrievably sold under an execution, sometimes without any redress, or, at least, not otherwise redeemable until the next term."

While the powers so exercised are ordinarily regarded as belonging to the judges rather than the courts, they are on principle, according to the authority above quoted, an exercise of the authority of the court itself,—“an inceptive act of the court.”

The authority of judges at chambers in term time and vacation is, in this country, usually defined by law; but instances are not wanting in which the courts have invoked ancient usage to sustain the exercise of customary powers. Such exercise, it has been held, is not curtailed by a constitutional provision that the judicial power of the state shall be vested in *courts*, upon the ground that such provision must have been framed with regard to existing methods of judicial administration.

It is the general rule that all judicial business must be transacted in term time; and when a law authorizes or contemplates the doing of a judicial act, it must be understood to mean that it is to be done by the court in term time. And while presumptions are often indulged in favor of the jurisdiction of courts of record, as such, the powers exercised by a judge in vacation are exceptional, and must find express authority in statute, or be such as have, from time immemorial, been recognized as inherent in the office of judge.

No power to perform judicial acts out of term time is conferred by a constitutional provision that the courts shall be always open. The interpretation generally put upon such a provision is that it means that the courts shall be open to business that may properly come before them at the time, in the order, at the place, and in the way prescribed, but not necessarily that such business shall be continuously transacted.

As has before been said, the power in vacation of courts in the various states, under statutory provisions, is a matter with which this article does not assume to deal. In view of the absolute powerlessness of the common-law courts to act as such out of term, the fact that the decisions relative to the powers of courts in vacation, aside from statutory powers, are largely of a negative character, will occasion no surprise.

Trial of Cases and Rendition of Judgments or Decrees

Thus, it has been held that out of term time, during vacation, the justices have no power to meet as a court; and a judge cannot, by order made in vacation, reopen a term after final adjournment. The court cannot proceed in vacation with the trial of a cause; and although it is held in some states that it may do so with the consent of the parties, the view has been taken in others that such consent cannot confer jurisdiction.

A similar situation exists with respect to the rendition of judgments or decrees, or the granting of orders finally adjudicating the rights of parties, except as provided by statute. The decisions are unanimous in declaring that a judgment, being a judicial act, cannot be rendered after term time, at least, without consent, and if so rendered is a nullity; nor can a decree be made in vacation in an equity cause. However, the court may in vacation correct its minutes so as to make them speak the truth with reference to a judgment actually rendered by it at a term.

There is a decided difference of opinion as to the validity of a judgment or decree rendered in vacation by consent. The practice, even where held permissible, has been characterized as of doubtful expediency, and not ordinarily to be

encouraged, being out of the general course of proceeding and practice, and not infrequently giving rise to misapprehension, distrust, and confusion.

Proceedings and Practice

The court cannot, in vacation, pass upon a demurrer to a complaint; or a motion to dismiss for want of equity; or determine a motion in arrest of judgment; or make an order vacating a judgment. It cannot, in the absence of statutory authority, grant a continuance; or make an order to subpoena witnesses for a defendant; nor can it grant temporary alimony. It cannot, without such authority, dissolve an injunction or discharge an attachment or garnishment, or deny a petition for a writ of mandamus.

It may not entertain proceedings for the revocation of letters of guardianship; and an attempt by a probate court in vacation to require an administrator to give further security has been held *coram non jndice*.

It has been held, however, that a motion for nonsuit may be heard, and that an order recommitting a report of commissioners to lay out a highway may be made out of term, by consent of the parties interested.

A trial court has no jurisdiction during vacation over a motion for a new trial; but it is not necessary that the court be in actual session at the time such a motion is made.

It may not, during vacation, fix the time within which an appeal bond shall be given, or require plaintiff in error to give a new bond, or furnish additional security. Nor may it, out of term, amend a bill of exceptions; nor, where the statute provides that such an order be made by the "court," may the trial judge make an order to send up original documentary evidence to the appellate court.

A justice of an appellate court has, it seems, the power in vacation to make a provisional order for a stay of proceedings in the court below, pending decision of the appeal, so as to enable the party to make or renew, if need be, a similar motion in term.

It is within the general power of a court of equity to make a provisional ap-

pointment of a receiver in vacation; but this may not be done where a statute provides for the appointment of receivers by the "court."

A judge of a court open only at stated periods has no authority, in vacation, to punish refusal to obey an injunction as a contempt; but it has been held that where a judge is invested with power to award an injunction in vacation, the grant of power carries with it, as an incident, the power to punish contempt in disregarding it.

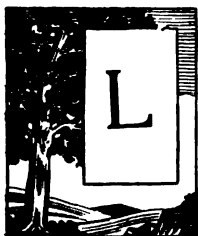
Habeas Corpus, Prohibition, or Certiorari

The granting of the great remedial writs is largely regulated by statute. At common law, the court of chancery, being always open in its capacity of *officina justitiæ*, might issue them at any time. According to Lord Coke, the courts of King's bench and common pleas could grant the writ of habeas corpus only in term time; but in the opinion of Blackstone, as well as of Lord Eldon (see *Crowley's Case*, 2 Swanst. 1), such writ could issue out of the court of King's bench in vacation. The writ of prohibition may not be issued by a court of law out of term time; but, to avoid injustice, the practice is sometimes followed of issuing a rule to show cause, returnable at the following term, which will operate as a stay in the meantime. With respect to the writ of certiorari, the broad rule has been laid down that it "ought not to be granted in vacation, but in open court" (*R. v. Eaton*, 2 T. R. 89); but a contrary opinion has been expressed (*Ludlow v. Ludlow*, 4 N. J. Law, 387).

As the foregoing *résumé* demonstrates, the courts have shown no disposition to arrogate to themselves the power to exercise judicial functions at other than the times regularly appointed. The delays formerly arising from the circumstance that many proceedings in a cause could take place only in term time have been generally obviated by legislative enactment; and under modern systems of practice, public convenience suffers but little, while the handling of judicial business is considerably promoted, by the retention of the ancient division of the year into vacation and term.

Laws Which Legislatures are Unfit to Make

BY BURDETT A. RICH



LEGISLATIVE power exceeds legislative capacity in some matters of large importance; that is to say, the legislatures have constitutional power to make laws on various subjects on which both reason and experience show that they cannot be trusted to legislate with proper intelligence or without improper influences. The truth of this statement in respect of some kinds of legislation is obvious, and the experience of more than a century has fully demonstrated it in some other matters. There are still many people, however, who appear to think that every attempt to provide a better method of determining any question within the broad scope of legislative power, however intricate or difficult it may be, than by majority vote of the members of the legislature, is an abandonment of the fundamental principles of our government. It may be worth while to review a little the reasoning of the matter and also the results of experience.

Claims against State or Nation

The fitness of a legislature to decide a question of the justice of a claim against a state or nation might not be doubted by most people when the question was presented as an abstract one. Yet, as such a claim requires an essentially judicial determination, the fitness of the average member of the legislature to pass upon it can hardly be presumed. Under the old Constitution of New York, which made the state senate a part of the court of errors and appeals, it was abundantly demonstrated that, on questions of law, at least, state senators were unfit to be judges. On claims against a state, questions of fact, rather than of law, are

usually presented, but these are often complex enough to require very minute, patient, and thorough investigation. The members of the legislature, as a body, even if they are capable of making such an investigation, never will do it. In fact, to do it would usually require an amount of time which it is impossible for them to give. Aside from the incompetence or indifference or lack of time which prevents legislatures from acting intelligently and justly on these claims, even when they act at all, has been the fact that it has been often, if not usually, impossible, to get them to act at all on a claim, however just, except by long persistence and lobbying. Without assuming corrupt motives on the part of most of the legislatures, they have too many other interests engaging their attention to be ready to take up claims of private individuals unless they are forced upon their attention in a way that practically compels action. As was said in these columns many years ago: "Real tragedies might be written from the lives of men whose long pursuit of a congressional award started with faith in the nation's honor, and ended with a bitter sense of the nation's dishonor. If the claim were finally allowed, the claimant might have already passed to another tribunal, where justice can be got without the service of a lobbyist." (5 Case and Comment, 27.) Speaking on the same subject a little later, the president of the American Bar Association said: "The government of the United States is the most cruel and rapacious creditor and the most dishonest debtor in this country. If a man has a claim against the government which needs the kindness of Congress, he had better destroy all evidence of the debt, so that future generations may not be distressed and made bankrupt in an effort to collect the claim." To add to the bitterness of the sense of injustice of those whose

just claims are ignored through many years of patient and persistent pleading for redress, the claims that have been successful have often been allowed only by the aid of a powerful lobby and large expenditure of money. During the whole history of our government, the treatment of claimants by Congress has made a shameful story of scandals and injustice.

Slowly and by degrees the nation and the states have been working away from this disgraceful state of affairs. Many years ago the Federal government established a court of claims, and some of the states have done the same. But there are many claims yet, especially claims for torts against state or nation, on which no justice can be done to the claimant except by special legislative favor. With more than a century of injustice and dishonor in the treatment of those who have just claims, and of scandals in the allowance of claims put through by lobbyists, it is time that our tribunals for claims had jurisdiction ample enough to cover every form of just claim, whether for tort or otherwise. The composition and unwieldy size of legislative bodies are enough to show their unfitness for judicially determining the justice of claims presented. But, if there were any doubt about that, actual experience has demonstrated beyond question that to leave these claims to legislative action is to deny justice to many honest claimants, and make the allowance of a claim depend not upon its justice, but upon the strength of the lobby that pushes it.

Regulation of Rates

The regulation of rates of public service corporations is another illustration of those questions which legislatures are altogether unfit to determine. The justice of a certain rate for fare or freight on a railroad, or for the use of a telegraph or telephone, is a matter that, in the nature of things, can be determined intelligently and justly only after the most careful judicial analysis of the principles that must govern, and, at the same time, the most extensive and accurate analysis and computation of a great mass of facts. Such a question is one that demands uncommon ability and an extraordinarily extensive and thorough investigation of

the facts. No other class of questions has presented greater difficulties to our judges. Yet many a legislature has undertaken to pass sweeping laws on this subject with no other knowledge on the part of most of the members voting than that common knowledge which belongs to all members of the community. The constitutional power of the legislatures to enact laws on this subject is beyond dispute so long as the restrictions do not amount to a confiscation of property, or a deprivation of it without due process of law. But the fitness of any legislature to decide such a question is obviously lacking. If there were no other way of dealing with such a subject, it might be necessary for the legislatures to act as wisely as they could, and leave the justice of the legislation to be determined by the courts; but this amounts to deciding by guess and throwing the problem on the courts. Certainly no one would contend that the average member of any legislature has or possibly can have any such knowledge of the intricate questions and intricate facts involved in the problem as enables him to determine judicially whether certain rates of a public service company are just. Neither will anyone contend that the members of the legislature, even if they have the ability, can, by any possibility, have the time to make such exhaustive investigation of those intricate matters as to enable them to judge the question intelligently. These questions, therefore, are, beyond dispute, outside the proper range of legislative action, though they are unquestionably within the constitutional range of legislative power. Little by little the conviction of this truth has been forcing itself on the people, with the result of establishing the Interstate Commerce Commission and the various public service commissions, railroad commissions, etc., in the various states. The movement for these commissions has been obviously in the way of experiment, and has been developing gradually and against some opposition. How much they may still need to be modified and improved may still be open to question. But no one can deny the reasonableness, and, in fact, the necessity, if justice is to be done, of substituting as judges of

these intricate and complex questions men of exceptional ability and training, who shall make it their business first to investigate and then to determine them, instead of leaving them to a mere majority vote of an unwieldy body of men with no training and with no time, even if they have the ability to investigate before deciding.

Tariff Legislation

The establishment of a tariff commission is another movement to relieve legislative bodies of duties which they are unfit to perform. Admitting that the tariff is a political question in its broadest sense, and not one of a judicial character, and therefore that the policy with respect to a tariff is to be settled by legislative action, it is, nevertheless, obvious that the determination of the exact rate of tariff on the multitude of specific articles imported should be impartially determined by the application of some general policy or rule of action in the light of the fullest investigation of facts in each particular case. That investigation obviously cannot be made by each member of Congress. Neither can it be made by any member of Congress for himself, however diligently he may apply himself to it, not only during the term of Congress, but in all the intervals between terms. Practically, the knowledge of the multitudinous facts that ought to be considered in making a tariff is entirely beyond the possible range of a legislative body, unless it is provided by exhaustive work by expert investigators. A tariff commission or some similar body must settle as far as possible beyond dispute all the facts that need to be considered. This is undeniably the first requisite of any fair and honest tariff legislation which shall faithfully adjust the various tariffs according to any policy adopted. But lack of knowledge is not the only or chief hindrance to proper tariff legislation by Congress. Every member of that body has friends and constituents who are vitally interested in the tariff rates on certain special commodities. They expect him to work for their interests. His whole district may be united in such demands. His own political life depends on his serving them. It is idle to expect him to vote against

the wish of his district. The result is that all the Congressmen, whether from a sense of loyalty to their own constituents, or to preserve their own political life, vote primarily as representatives of their own districts, and not as national representatives. To get what he wants for his district, each has to vote for many things that he does not want, but which the representatives of other districts do want, and thus what has been picturesquely known all through our legislative history as "logrolling" comes to be the real process of legislation in this class of cases. It is obvious to everyone that such a method of making a tariff law is to a large extent, a compromise of conflicting special interests. It might almost be called a conspiracy among them against the public at large, except for the fact that those specially interested in demanding exorbitant tariffs often persuade themselves that they are for the benefit of the public at large. The law is the result of scrambling. If a competent commission investigates and establishes the essential facts, and Congress determines some rule of policy to apply to them, it will be possible to enact a tariff that shall honestly represent a principle and be made in a businesslike way.

Appropriations

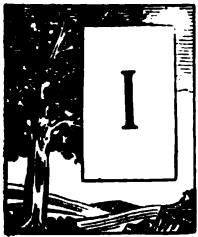
There are various other matters of legislation which also should be dealt with by our legislative bodies, if at all, only after all disputed questions involved have been determined by men with adequate opportunity to investigate them and fully competent to determine them. To mention a single other instance, the whole matter of appropriations, whether by Congress or state legislature, has long been a reproach because of the vast sums of money wasted by legislatures under the system of logrolling. The contemptuous name of "pork barrel," long ago given to such a bill, illustrates the universal feeling of the public with respect to the methods and motives which control in the enactment of such laws. On these and similar subjects, the business sense of the people of the country will more clearly see the unfitness of legislative bodies to deal with the subject in the old-fashioned way, and will demand a better system.



Log Cabin Courts of Long Ago

BY DAVID C. BAKER

Illustration By EDWARD J. DAVIS



IN the days of which I write, the judicial system, like the country, was in its infancy. The circuit court was composed of a president judge, elected by the legislature, and who presided at all the courts in the circuit,

and two associate judges, elected in each county by the people. The president judge was always a lawyer of some experience. The associate judges were not lawyers, and they made no claims to legal knowledge. As a rule, they were typical representatives of the backwoodsmen, and very illiterate, yet, they had the power to override the presiding judge and give the opinion of the court, and they often did so. In such instances, their reasoning was likely to be of a most ludicrous character. However, they made up in honesty what they lacked in other directions, and the results were not as bad as might be imagined. They were usually elected because of their popularity and their well-known integrity, and though they occasionally went wrong, their constituents did not strongly censure them because of their mistakes.

Lincoln told a story of such a judge in the early history of Illinois. He had long been issuing marriage licenses, without authority, of course. One day he was told that he had no right to do so. He insisted that he had, and after much argument proposed to leave the question to Lincoln. They went to the latter's office, and the facts were stated. "No, Uncle Billy, you have no right to issue marriage licenses," said Lincoln. "Abe," replied the judge, "I thought you were a lawyer, but now I know you are not. I have been doing it right along."

Clerks of Pioneer Courts

The clerks of the pioneer courts were seldom qualified for their duties, and many old-time records are the living proofs of this statement. They were uneducated and some of them barely had the ability to scrawl their own names, yet, they did not lack native shrewdness. There was a clerk in one of the pioneer settlements of central Indiana who boasted of his superior qualifications by declaring that he had been sued on every section of the statute, and therefore knew the law, while his opponent had never been sued, and therefore could not know the law. He was elected on this platform.

Old-Time Sheriffs

The sheriffs were chosen by the people, and the man who could send his voice farthest in the woods, from the courthouse door, was often the successful candidate. A stentorian voice, physical strength, and tried courage, were the principal qualifications for this important office. When the court desired the presence of John Smith as a petit juror, or as a witness, it was the sheriff's duty to stand outside the courthouse, or poke his head out of a window, and cry three times and with all the power of his lungs, "John Smith, come to court," and John generally heard the call and obeyed. If he happened to be so remote that he did not hear, there were always plenty of loiterers who esteemed it an honor to go after him. A written summons was seldom resorted to. It was regarded as a waste of material and time, to say nothing of the stupendous task which the preparation of such a document would place upon a clerk who could hold a plow handle or a rifle barrel much more effectively than a pen.

Ancient Records

But all clerks were not of this pattern. In some of the courthouses of the West, or central West, are to be seen records, more than a century old, which are beautiful specimens of the penman's art. Many of them are more legible than records written within the last dozen years. The old-time, competent record writer took great pains in his work. He often made his own ink, a strong nut-gall and iron decoction, and he used no blotter. All the ink that he spread upon a page remained there, and soaked in, and now, after the passing of a century or more, no chemist on earth can remove it without destroying the paper upon which it is written. Within recent years the United States government officials have complained that while its modern records have faded, some of them being almost illegible, its records a century and more old are as plain as ever. A public official who permits the use of the blotter upon important public records which are intended to be permanent is derelict in his duty to future generations. The only writing fluid fit for permanent record purposes is an iron-tannic ink. It is the only ink that is lasting, and public officials should permit the use of no other.

The Bar

The judges and clerks and the sheriffs were important functionaries in the courts, but by far the most important men who attended the sessions of the courts were the lawyers, especially the younger ones. But nobody called them lawyers. They were squires. To see a young squire with a queue 3 feet long dangling down his back and tied with an eel skin, strutting backward and forward over the rough hewn slabs that formed the floor of the ordinary log courthouse, brought the woodsmen from near and far; and to hear him "plead" was worth a wearisome foot journey over ice and snow, across swollen rivers and creeks, through an interminable forest.

Politics of Long Ago

If the young lawyer had no business in the court, he mixed among the people about the courthouse, and sounded their

minds as to his prospects as a candidate for the legislature, or any other office that he might have in view. Those were the days of no caucuses and no conventions. Every candidate brought himself out, and ran upon his own hook. If he was defeated, and most of them were, he had nobody to blame but himself.

There must have been lots of fun in politics in the good old times. Our modern party organizations, dominated by political machines, were unknown, and everybody could run for office. As a rule, the settlements were divided between admirers of General Jackson and Henry Clay, and a candidate's loyalty to the one or the other of those great men was the prominent feature of almost every political battle. This fact is best illustrated by a story.

On one occasion, a bright young lawyer, Oliver H. Smith, a candidate for Congress, had spoken more than two hours at a battalion muster in Ripley county, Indiana. In front of him, leaning against a tree, was an old man, who listened attentively to his discourse. When Smith closed, his hearer roared out:

"Mr. Smith, you have made one of the best speeches I ever heard, and I agree with all you have said. Will you answer me one question before you leave the platform?" Mr. Smith said he would.

"Will you vote for General Jackson?"

"No, sir, I shall vote for Henry Clay," answered Smith.

"Then you can't get my vote," was the old fellow's ultimatum. The question with the old man, and he was a type, was not between Smith and his competitor, but between Jackson and Clay.

The Courthouses

The courthouses were mostly log buildings with puncheon floors and clapboard roofs that always leaked in the wrong place. There was a door in one end, and maybe a small window on the side. The furnishings were rudely simple. There was a bench, without back, for the judges, who sat upon a platform sufficiently elevated to permit them to have a clear view of the room. There

were similarly constructed benches for the lawyers, witnesses, and jurors, and maybe a few benches for the spectators. The clerk had a rough table, and there was a pen for prisoners. Off the court room was usually a small room, used by the grand jury. Spectators were separated from the court and bar by a long hickory or ash pole, supported at each end by wythes of hickory bark. If the building boasted a stove instead of a fireplace, it was placed in the center of the room, so that every corner was equally heated.

But what was done in those rude and simple log buildings was on the square. Nobody ever questioned the honesty of the judges who presided in them, though it is possible an unpopular decision might have led to wordy warfare and some picturesque profanity which the "side judges" could be relied upon to repay in kind.

Making Business for the Court

I once met an aged man who told me that so much did the people of some of the near counties figure upon the periodical coming of the court, that they would deliberately make unnecessary litigation rather than face the prospect of no session, because of no cases for the court to hear. The establishment of a court in a new community seemed to develop litigation which would never have been thought of had the court not come. Men acquired what might be described as a litigious itch, and went to law upon the smallest provocation. A neighbor might have another neighbor arrested, not because he had injured him, or that he was an enemy, but for the sole purpose of keeping the court as long as possible, and to supply the young lawyers with something to "plead" about. A pioneer has been known cheerfully to give up a sow and her litter of pigs to secure money to pay the costs in an unnecessary and insignificant case, and to fee a young squire to the extent of two or three dollars.

Between sessions of the court, the inhabitants consumed a great amount of time discussing amongst themselves what the last session had done, and what the next session probably would do. They were partisans of the different lawyers

who rode the circuit. They often heatedly compared their abilities, and their extreme loyalty to one or the other not infrequently resulted in rough and tumble fights in which gouging, biting, and kicking were not barred. This made more work for the squires.

Suits for Slander

Judging from the number and variety of suits for slander docketed in some of the pioneer courts, one had to be extremely careful what he said about another, if he cared to avoid a suit.

The story of a single suit, one which aroused the interest of politicians all over the country, will sufficiently bear out the foregoing statement.

The scene of the trial was Franklin county, Indiana, which was mostly settled by men and women who had been reared in the woods of Kentucky. The parties to the suit were Josiah Harlan, plaintiff, and John Allen, defendant. The cause of the suit was the declaration by Allen that Harlan was a "d—d old Federalist." The plaintiff claimed that to be called a "d—d old Federalist" was scandalous and libelous; and that the charge that he was such had brought him into public disgrace, and his neighbors had since refused to have anything to do with him. The counsel for the defendant demurred to the declaration, insisting that to call a man a Federalist was not libelous, and not actionable. The case was heard by the associate judges, the presiding judge being absent. The demurrer was overruled, the defendant entered a plea of "not guilty," and a jury was impaneled. Great difficulty was found in securing a jury, because most everybody in the county had formed an opinion. But a jury was finally secured.

When the examination of witnesses began, the court room was crowded with an excited audience. It was evident that its sympathy was all on one side, and as jurors in those days, more than now, generally sympathized with the spectators in feelings, the result was not hard to anticipate. The plaintiff's witnesses, thirty in number, were sworn at one time. As they arose, it was said, they resembled the men who composed Falstaff's company.

"We will examine Mr. Herndon first," said General James Noble, leading counsel for the plaintiff.

Mr. Herndon, seventy years old, born in the woods of Kentucky, and who removed to the territory of Indiana before George Rogers Clark's army marched upon Post Vincent, now Vincennes, took the witness stand.

"Mr. Herndon, do you consider it libelous and slanderous to call a man a Federalist?" asked General Noble.

"I do," the old man answered.

"Which would you rather a man would call you, a Federalist or a horse thief?"

"I would shoot him if he called me one or the other."

"You have not answered the question," said General Noble.

"Well," replied Herndon, "I would rather be called anything under the heavens than a Federalist."

"What damages would you say the defendant should be made to pay for this libel in calling the plaintiff a Federalist?"

"I would say a thousand dollars at least."

Judge John H. Test, attorney for the defendant, then took the witness.

"Mr. Herndon," he asked, "What do you understand by a Federalist?"

"My understanding is that it means a Tory, an enemy to his country," the witness replied.

"Is that the common acceptance of the term?"

"Yes, I have never heard any other from the first settlements in Kentucky up to the present time."

General Noble again took the witness, and asked him one more question.

"Mr. Herndon, would you feel safe, with a Federalist by your side, to meet the Indians in a hush fight?"

"I would not. I would just as lief have one of the hostile Indians with his rifle and tomahawk by my side."

There was a brief conference between the opposing attorneys, then General Noble arose and said:

"May it please the court, we have twenty-nine other witnesses that we are ready to examine, but to save time, it is agreed by counsel that they will each swear to the same facts as those stated by Mr. Herndon, and that the publication of the libel is admitted."

No evidence was offered for the defendant. Lengthy speeches were made by the counsel on both sides, covering in their range the history of the general government from its organization; with Washington at its head; the election of Jefferson over Adams; the close and exciting contest between Jefferson and Aaron Burr; the Articles of Confederation; the adoption of the Constitution; the Cunningham correspondence; the visit of the citizen Genet to the United States; the alien, sedition, and gag laws; the impeachment of Judge Chase; and the examination of Aaron Burr for treason, before Justice Marshall. It was after midnight when the speeches closed and the jury retired. The charge was given the next morning. The court room was packed by the same crowd of excited people. The jurors took their places in the box, and one of the associate judges addressed them:

"Gentlemen of the jury, this is an important case. You are the judges of the law and the fact. This court do not feel authorized to invade the province of the jury; the whole case is with you." The jury retired and in a few minutes returned into court with the following verdict:

"We find that to charge a man with being a Federalist is libelous, and we assess the damages of the plaintiff at one thousand dollars, the amount sworn to by Mr. Herndon, and would have been by the other twenty-nine witnesses that were not examined, as was admitted by the counsel."

"The court are well satisfied with your verdict," said the associate judge. "You are discharged to get your dinners, as you have not yet had your breakfasts."

In one of the new settlements of Kentucky, a man named Green accused his neighbor of stealing his hogs, which had run wild in the woods. He was sued for slander, employed a young lawyer named Smith to defend him, and when the case was called for trial he was in a fighting state from whisky.

The plaintiff's witnesses proved that Green had used words equivalent to those in the bill of indictment, but not the exact words. The evidence closed, the lawyer for the plaintiff addressed the jury at great length, winding up with

the quotation from Shakespeare, "He who steals my purse steals trash, but he who filches from me my good name," etc. The court room was in a little log cabin with only one window and a pane of glass was out of the lower sash of that. Mr. Smith, the defendant's attorney, arose, with his back to the window, and began his address in a loud voice:

"Gentlemen of the jury, the court will tell you that proof of equivalent words will not do. You must find for the defendant. There is no proof that he ever spoke the words." He here paused for a moment, and the instant his voice ceased, Green, who was plainly drunk, and on the outside of the cabin, poked his head through the vacant place in the window, and yelled at the top of his voice:

"Smith, don't lie. I did say he stole my hogs and I will never deny it."

The young attorney, addressing the judge, said:

"I do wish the court would send my client to jail. He has been drunk and crazy ever since this case was docketed against him."

Upon the judge's order the sheriff arrested Green after an hour's chase through the surrounding woods, and locked him up until the trial was over. Smith won the case, and had his client discharged from jail without having to resort to a writ of habeas corpus.

But the end was not yet. Green met the plaintiff the next day, pulled his nose and slapped his face. He was indicted for assault and battery.

The trial day came. The log cabin court room was crowded, and Smith again appeared for the defense. The two associate judges were on the bench. The evidence all in, Smith arose and began:

"If the court please—"

He was here interrupted by one of the judges,

"Yes, we do please. Go to the bottom of the case, young man. The people are here to hear the lawyers plead."

Encouraged by this extreme kindness of one of the trial judges, the young lawyer waded into his task, and for three hours spoke concerning the terrible provocation his client had received to induce him to bound over legal barriers and pull

the plaintiff's nose. It was a tremendous effort, and when he closed, the same kind judge sprang to his feet, waved his arms, clapped his hands, and shouted:

"Capital, capital, young fellow, I didn't think it was in you."

Is it necessary to add that Smith's client was acquitted?

Tact versus Learning

Much learning was not always a good thing for a lawyer practising in the new settlements, unless it was accompanied with good, hard, common sense. To exploit knowledge of the classics in a court presided over by a couple of associate judges who were usually rough woodsmen was worse than useless. I will again illustrate. The evidence in a certain case was all in, and the arguments began. On the one side was a newcomer in the country, armed with Latin, Greek, Hebrew, and an infinite variety of classical knowledge, all topped off with a beautifully ornamented diploma decorated with blue ribbon and a seal,—the output of old Yale. On the other side was a lawyer who had been reared in the backwoods, educated between times in a fifteen by twenty log schoolhouse in Kentucky, and armed with a large amount of common sense. Before the graduate of Yale lay an array of the old books, Coke on Littleton, Blackstone's Commentaries, Woods' Institutes, Jacobs' Law Dictionary, and many others. Thus prepared, the learned counsel advanced boldly to his task, with a confidence born of self-admiration. His argument consumed the entire day, greatly annoying the court, who understood very little of it. The next morning, the Kentucky lawyer spoke. He began:

"If the court please, I shall not attempt to follow the learned gentleman, in his long speech, nor even to read and comment on his authorities. They may all be well enough in the right place, in their proper jurisdiction; but they have no bearing whatever in this court, in this jurisdiction. I have in my hand a little book from which I will read a few extracts,—just a few."

"What book is that?" asked the court.

"It is only the Declaration of Independence," was the answer.

"Well, that is coming to the point, read it," said the court.

The lawyer read: "When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another," etc., and "We, therefore, the representatives of the United States of America, in Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent states; that they are absolved from all

allegiance to the British Crown; and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." Here he ceased reading.

"That is conclusive," said the court. "These British authorities were all cut off on the 4th day of July, 1776. Judgment for the defendant."

The young lawyer from Yale profited by his experience, and in after years became one of the noted lawyers of the western country. The log cabin courts were a rough school, but they served to train many able and eloquent lawyers, whose doings and sayings are still treasured among the legends of the border days of long ago.

A Graceful Valedictory

Judge John F. Philips, who was recently succeeded on the bench of the United States district court for the western district of Missouri by Honorable Arba S. Van Valkenburgh, uttered the following graceful valedictory at the time he relinquished office: "There is an immutable law of nature," he said, "that permits of no procrastination and waits on the pleasure of none. When the old court house clock shall strike twelve again, at noon to-day, I shall cease to be a judge. I have not only had 'my day in court,' but I have had about twenty-five thousand of them. I was eligible for retirement five years ago, but the condition of business in the court of appeals at that time made my continued service essential.

"I chose to-day for my retirement, as a matter of sentiment, because to-day is the twenty-second anniversary of my appointment to this bench. This swarm of memories, recollections, old scenes, old friends that are brought up this morning by the more than generous words spoken here have roused others that are hard to repress. The court room has been my habitation for twenty-seven years. Many

men have passed before me in those years. I have seen somewhat of life in that time; ambitions only partly attained, tomes of writing unfinished yet, mountains of work. It would be remarkable, indeed, if in all those years, traversing such continents of law, I should not have blundered somewhere. . . .

"As I stand here, far down the slope toward the sunset glow, I recall the words of that great Democrat and statesman, Grover Cleveland, 'I have tried so hard to do right.' All I can say of my judicial career is this, As God is my witness, I have tried so hard to do right. I have done my duty as God gave me the light to see it. And when I shall step from this stand it will be with malice toward none and charity for all, with no bitter regrets, but hopes and aspirations that my feet soon will tread the primrose pathway that leads into meadows of peace where no bitter waters run.

" 'Old wood to burn,
Old wine to drink,
Old friends to greet,
Old books to read.'

Moral Obligation as a Consideration for an Express Promise

BY GEORGE H. PARMELE



HERE was formerly an impression, derived originally, perhaps, from some generalizations by Lord Mansfield, that a mere moral obligation is a sufficient consideration to support an express promise. This view, how-

ever, at least so far as it embraced moral obligations in the sense of a mere conscientious duty resting solely on ethical considerations, was challenged and practically overthrown by a note to the case of *Wennall v. Adney*, 3 Bos. & P. 249, and the subsequent cases adopting the reasoning and conclusions of the writer of that note. The law, therefore, permits one to repent of his passing fancy to transmute his moral obligations of this character into legal liabilities, however strong the appeal to the conscience, or however commendable his original purpose. A good, or at least an illuminating, illustration of the application of this undoubted rule, is afforded by the case of *Mills v. Wyman*, 3 Pick. 207, where the court, while recognizing the strong obligation resting upon a father to reimburse a stranger for expenses incurred, without the former's request, in caring for an adult son who had fallen into poverty and distress, nevertheless held it was insufficient to constitute a consideration to sustain an express promise by him to do so, he being under no legal duty to care for his adult son. Upon the other hand, it is equally well settled that the moral obligation resting upon one whose antecedent legal liability has been discharged or suspended by some positive rule of law enacted for the protection of persons in his situation, and not for the protection of the public generally, will constitute a sufficient consideration to sustain a subsequent express promise to reassume that liability. The cases upholding the validity of new

promises after the bar of the statute of limitations, or after a discharge in bankruptcy, are familiar illustrations of this point.

The question of difficulty and conflict arises with respect to subsequent express promises based on moral obligations arising from the previous receipt by the promisor of actual or material benefit conferred by the promisee either in reliance upon a contract void *ab initio*, or without any previous contract or request at all, void or otherwise. New promises after discovery, following void contracts made by married women during coverture, are familiar examples of the first alternative; and as shown in a note in 7 L.R.A.(N.S.) 1053, there is a square conflict of authority as to the validity of such new promises.

Instances of the second alternative are not so numerous. Such an instance, however, is furnished by the decision of Judge Gaynor in *Drake v. Bell*, 26 Misc. 237, 55 N. Y. Supp. 945, that the moral obligation resting upon the owner of a house who had been benefited by repairs made thereon by a mechanic, under a mistake, he having been employed by a third person to make the repairs on the house next door, affords a sufficient consideration for a subsequent express promise by the owner to pay therefor. Another instance of this kind is *Boothe v. Fitzpatrick*, 36 Vt. 681, holding that a promise to pay for the past keeping of a bull which had escaped from the defendant's premises and had been cared for by the plaintiff was good although there was no previous request. A very recent instance is *Edson v. Poppe* (S. D.) 26 L.R.A.(N.S.) —, 124 N. W. 441, in which the South Dakota court held that the promise of a property owner to pay the cost of driving and casing a well which his tenant had constructed on the property was supported by a sufficient consideration if the services were beneficial to him, and were not intended

to be gratuitous. It will be observed that in none of the three cases just referred to was there any previous request, express or implied, and there was, of course, no antecedent contract, void or voidable, nor legal liability, perfect or imperfect.

While the results reached in these cases seem eminently just and fair, and contrary results would have been shocking to the moral sense, yet it must be conceded that there are many cases which lay down an antagonistic rule. The difference in principles is represented, on the one side, by cases that declare in effect that a moral obligation does not form a valid consideration for a subsequent promise unless the moral duty was once a legal one, and, upon the other side, by Judge Gaynor's statement in the case already referred to, that "a subsequent promise founded on a former enforceable obligation, or on value previously had from the promisee, is binding." In the first form the principle amounts to little, if anything, more than a declaration that the moral obligation is sufficient to sustain an agreement to waive the defense that the former legal liability has been discharged or is no longer enforceable. The controlling principle is perhaps more often stated in the first form than in the second. In many of the cases, however, that state the rule in that form, the moral obligation involved was either of the first class above referred to, which is conceded to be insufficient to sustain a subsequent promise, or of the second class, which is conceded to be sufficient for that purpose, so that the courts were not called upon to pass upon the sufficiency of a moral obligation of the third class as to which the conflict exists. There are, however, some cases that have applied the principle in the first form by holding that a moral obligation of the third class is insufficient to sustain a subsequent express promise. Thus, for instance, in *Massachusetts Mut. L. Ins. Co. v. Green*, 185 Mass. 306, 70 N. E. 202, it was held that a subsequent promise to repay one who has paid an indebtedness of the promisor is not equivalent to an original request, and is without consideration. And to the same effect is *Thomson v. Thomson*, 76 App. Div. 178, 78 N. Y.

Supp. 389 (disapproving *Doty v. Wilson*, 14 Johns. 378).

The impression apparently entertained by many courts, that, to render a moral obligation a sufficient consideration for an express promise there must have been at some previous time a legal liability on the part of the promisor to the promisee, seems to have had its origin in a statement by the writer of the note in 3 Bos. & P. that Lord Mansfield gave as instances of express promises supported by a moral obligation: a promise to pay a debt barred by the statute of limitations; a promise by a bankrupt, after his certificate, to pay an antecedent debt; and a promise by a person of full age to pay a debt contracted during his infancy,—all cases, it will be observed, in which there was at one time a legal liability, perfect or imperfect, though not enforceable at the time of the subsequent promise. Undoubtedly, cases of the kind Lord Mansfield thus instanced afford the most numerous and familiar examples of moral obligations arising from the receipt of actual material or pecuniary benefit, apart from any legal liability existing at the time of the express promise; but Lord Mansfield evidently did not mean to intimate that they were the only cases of that kind, or that it was only where there was once a legal liability that a moral obligation would constitute a consideration, since he laid down the rule in terms broad enough to cover even moral obligations of a mere conscientious nature, unconnected with the receipt of actual material or pecuniary benefit by the promisor.

Certainly, a principle that is so technical as to make the validity of a new promise by one who has received the benefit under a previous unenforceable contract depend upon the question whether the statute theoretically admits the existence of the former contract, and merely prevents its enforcement, or declares it absolutely void, does not appeal very strongly on the practical side. Nor when facts like those involved in *Drake v. Bell*, for instance, and other cases of that kind already cited, are presented, is one inclined to admit the soundness of the principle, unless constrained thereto by necessity. The necessity, if the general doctrine that a mere moral obligation of

a conscientious nature, resting solely upon ethical considerations, will not sustain a subsequent express promise, is to be maintained, of admitting that a moral obligation, in order to constitute a consideration for an express promise, must once have been a legal liability, might be conceded, if the existence or nonexistence at some prior time of a legal liability were the only criterion by which a moral obligation of a conscientious nature merely may be distinguished from a moral obligation arising out of, or connected with, circumstances of which the courts may take cognizance. There is, however, an essential and vital distinction between a moral obligation which springs merely from ethical considerations and one which springs from or is connected with the receipt of benefit of a material or pecuniary kind which of itself, and apart from any element of detriment to the promisee, would have sustained an antecedent or contemporaneous express promise. Indeed, the distinction based on the fact whether or not the promisor received any material benefit, as contrasted with the mere satisfaction of his ethical obligations, rather than that resting on the fact whether or not there was ever a legal liability, seems to be the real justification for upholding a subsequent express promise in one case and not in another. Since it must be conceded that even when there was formerly a legal liability which had become barred or discharged by operation of law, it was, prior to the subsequent promise, as much beyond the power of the law to enforce that liability without the promisor's consent or acquiescence, as if it had never existed, it is difficult to perceive how the fact of its former existence can have any legitimate effect upon the question as to the sufficiency of the moral obligation remaining after the bar or discharge to support a new promise, except as it may enable the court to distinguish that moral obligation from those moral obligations which rest solely on ethical considerations of which the court may not take cognizance. But, as already intimated, the question whether the benefit received by the promisor was of such a material or pecuniary character that it would in itself, and apart from any element of detriment to the promisee, have

sustained an antecedent or contemporaneous express promise, affords a practical and accurate test by which the two kinds of moral obligations may be distinguished. The application of this test, for example, to the assumed facts upon which Judge Gaynor decided *Drake v. Bell*, at once discloses a moral obligation of a kind that even apart from any detriment to the promisee, would have sustained an antecedent or contemporaneous promise, and is, therefore, sufficient to sustain a subsequent express promise, whereas its application to the facts involved in *Mills v. Wyman* discloses at once a moral obligation resting solely upon ethical considerations, and destitute of any element of material or pecuniary benefit which, apart from the detriment to the promisee, would have sustained an antecedent or contemporaneous promise, and which is, therefore, insufficient to support a subsequent express promise. The more liberal doctrine, embodied in the statement of the principle above quoted from Judge Gaynor's opinion, does not, therefore, trench at all upon the rule that moral obligations of a merely conscientious nature, unconnected with the receipt of actual material or pecuniary benefit by the promisor, will not afford a consideration for a subsequent express promise. Nor, even under this more liberal doctrine, does the fact that the moral obligation of a conscientious nature, resting upon the promisor, but unconnected with the receipt of actual material or pecuniary benefit, was accompanied by material and pecuniary detriment to the promisee, render it a sufficient consideration to support a subsequent express promise.

To render this doctrine applicable it must appear: (1) That the service or other consideration moving from the promisee conferred an actual material or pecuniary benefit on the promisor, and not merely that it resulted in detriment to the promisee; (2) that the promisee expected to be compensated therefor, and did not intend to confer a mere gift or gratuity; (3) that the circumstances were such as to create a moral obligation on the part of the promisor; (4) that the benefit received must not have constituted the consideration for another promise, already enforced or still legally enforce-

able. It is not necessary, however, under this doctrine, that there shall have been at any time any legal liability resting upon the promisor, although, of course, the fact that there was at one time such a legal liability does not take the case out of the doctrine.

The best argument, perhaps, against the doctrine which insists that the moral obligation must have been a legal liability in order to constitute a consideration for a subsequent express promise is the result accomplished by its application in cases like the Green and Thomson Cases, above referred to, or the result it would have accomplished if applied to the facts of the Drake Case. Judge Gaynor, in the latter case, after stating that the question was not free from doubt, pertinently quoted the words of Chief Justice Marshall: "I do not think that law ought to be separated from justice where it is, at most, doubtful."

The doctrine here urged, it will be observed, does not call upon the courts, in the search for a consideration, to go outside the domain of material and pe-

cuniary benefit, and enter the realm of mere moral duty, since the benefit necessary to make this doctrine applicable is of the same material and pecuniary nature as that which the court is accustomed to recognize as sufficient to constitute a consideration for an antecedent or contemporaneous promise, irrespective of any element of detriment to the promisee. This doctrine, moreover, affords full opportunity for the withdrawal of a promise prompted by a too sensitive appreciation of benefits of a mere sentimental nature, and full protection against the interference of an officious or innocent meddler who undertakes to improve another's property or pay another's debts at his expense, but without his knowledge or consent, so long as the latter refrains from promising reimbursement; but if, recognizing his moral obligation and the material pecuniary and financial benefit that has been conferred upon him, he sees fit to bind himself, in the language of a Louisiana case, "let him be bound."

Higher Ideals for Lawyers

IN a recent address, President Taft struck directly at the cause of much of the complaint that the law does not always mete out justice at its bar. He emphasized what the best lawyers have long recognized, that the law's failure is due more often to the misdirected zeal with which lawyers often serve their clients, bending energy to the winning of their case, without regard to the justice of the cause which they have been employed to serve, and unmindful of the fact that they owe a duty to the public, as well as to their client. The President says:

"One must recognize that the administration of justice in this country has suffered grievously from the intensity with which lawyers have served their clients, and the lightness of the obligation which they have felt to the court and to the public, as officers of the court and the law, to do no injustice. The lack of scruples as to means, which counsel too

frequently exhibit in defense or preservation of their clients, is often the occasion for popular resentment. The conduct of the defense of criminals in this country, and the extremes to which counsel deem themselves justified in going to save their clients from the just judgment of the laws, have much to do with the disgraceful condition in which we find our administration of law."

This is indeed a severe arraignment of the men whose profession it is to uphold the administration of law and facilitate the workings of justice. But, after all, the President has but voiced what most people know to be a fact, and the worst of it is, as he says, he sees no remedy except in the expulsion from the profession of those men who stoop to such practices. But such a remedy would be most difficult of application. The border line between commendable zeal and pernicious activity is hard to define.

The "Summing Up"

BY FRANCIS L. WELLMAN

Being a part of Chapter XIII. from his remarkable book, entitled "Day in Court," or "The Subtle Arts of Great Advocates," copyright 1910, by the MacMillan Company, New York, and reprinted in CASE AND COMMENT by special permission of the author.



IN the ordinary case such as is likely to occur during the first ten years of an advocate's practice, if he has done his work properly up to the time for his closing argument, it ought not to be necessary for him to spend much, if any, time in his "summing up."

In other words, if his case has been thoroughly prepared, his jury carefully chosen, his facts clearly set forth in his "opening," his own witnesses skilfully examined, so that their testimony is plainly understood by the jury, and his adversary's witnesses have been subjected to the tests of cross-examination, there should be little need of a summing up in the ordinary simple case.

Of course, the more complicated the facts, the more important the summing up becomes.

Relation of Minor Facts to Main Issues

In the closing argument one should always bear in mind that the jury has heard the evidence in court for the first time, and in a comparative hurry, whereas counsel may have studied the facts for weeks or months before the trial. The jury, therefore, cannot so fully measure the value of the testimony, nor so well understand its force and effect. In many cases they need these things pointed out to them, and need to be shown the connection between the multifarious little bits of testimony that go to establish the main issues which they are to decide.

It requires but little experience in court to arrive at the conclusion that the great majority of cases are composed of

a few principal facts, surrounded by a host of minor ones; and that the strength of either side of a case depends not so much upon the direct testimony relating to these principal facts alone, but, as one writer very tersely puts it, "upon the support given them by the probabilities created by establishing and developing the relation of the minor facts in the case."

It is the business of the advocate in his summing up to gather these multifarious minor facts, and to so arrange them that their character and effect and relation to one another and to the principal facts in the case may be appreciated by the jury without any great mental effort upon their part.

In almost every trial there are circumstances which, to a jury, may appear light, valueless, even disconnected, but which, if skilfully handled by the advocate in his summing up, become united together and thus form wedges which drive conviction into the jurors' minds.

Marshaling Facts and Circumstances

An important principle to be borne in mind is that a closing argument filled with mere naked assertions is always feeble. It is not enough merely to state the evidence of the witnesses, however clear and concise the recital may be. But, as already indicated, the connection between the facts must be shown, their relation to one another, their value must be exhibited, their probability or improbability pointed out, their truth established or their falsity exposed. The testimony should be carefully and skilfully analyzed, and the strength of the advocate's own evidence and of his own strong points made prominent, and clearly con-

trasted with the weakness of his adversaries' evidence and position. The conduct of witnesses, both in and out of court, including their relations to the case, their motives, their bias, and credibility should be discussed, and their contradictions pointed out or explained away; everything that militates against his side should be carefully scrutinized, and, where possible, should be criticized with the utmost severity. Improper motives and suspicious circumstances are proper subjects for comment and sometimes for invective, and, finally, all arguments and inferences against his side of the case should be met and clearly refuted.

This skilful marshaling of facts and circumstances, casting weak points into shadow and bringing out strong ones into bold relief, clearly explaining events and circumstances, giving tone and color to testimony, is one of the crowning arts of the advocate. But he should remember that, as someone has said, with the shading and coloring materials the advocate needs always to do as a great painter advised a poor one to do with his colors, mix them "with brains."

Evidence more Powerful than Eloquence

Outside of the legal profession the prevailing idea of a great advocate seems to be that he must be a great orator,—that most rare and magnificent creation of the Almighty.

In the days of Erskine, Burke, Rufus Choate, and Webster this was more or less true, and in those days such characters were fairly idolized in the communities in which they tried their cases.

When Patrick Henry "summed up" the celebrated tobacco case against the parsons in 1758, it is said that the people might have been seen in every part of the courthouse, on the benches, in the aisles and in the windows, hushed in deathlike stillness, and bending eagerly forward to catch the magic tones of the speaker. The jury were so carried away by his eloquence as entirely to lose sight of the express legislative enactments which clearly gave the plaintiffs the right to a verdict, and even the court lost the equipoise of its judgment, and refused a new trial; while the people (who could

scarcely keep their hands off their champion after he had closed his harangue) no sooner saw that he was victorious than they seized him at the bar, and in spite of his own efforts and the continued cry of "Order!" from sheriff and the court, bore him on their shoulders out of the courthouse, and carried him about the yard in frenzied triumph. (Donovan's "Modern Jury Trials.")

The accounts given of the effects by some of Daniel Webster's speeches seem almost incredible to those who have never listened to him.

Professor Ticknor, speaking in one of his letters of the intense excitement with which he listened to Webster's Plymouth address, says: "Three or four times I thought my temples would burst with the gush of blood; for after all you must know that I am aware it is no connected and compact whole, but a collection of wonderful fragments of burning eloquence, to which his manner gave tenfold force. When I came out, I was almost afraid to come near him. It seemed to me that he was like the mount that might not be touched, and that burned with fire."

And where was "the force of fighting eloquence better illustrated than when General Butler was heard in his powerful philippic on an Indianapolis editor, when hundreds stood up on their seats and shouted: 'Hit him again! Give it to him!' striking their hands together and reiterating, 'Give it to him! give it to him!'" (Donovan's "Modern Jury Trials.")

But nowadays the public press (and thereby the general diffusion of information), the better education of the middle classes, the gradual development and growing intelligence of mankind, have materially weakened the force of oratory,—formerly the one most effective weapon of the advocate.

It is now evidence rather than eloquence that prevails with our modern juries, and this is becoming more so every day, and the old-fashioned formal harangues, "flashings of intuition," have gradually given way to the brief, businesslike speeches of modern times.

It would hardly be germane to our subject to discuss the changes in society

and the manifold causes that have led up to this state of affairs; but certain it is that nowadays we seldom, if ever, witness the dramatic scenes that a century ago used to characterize jury trials. Whereas in the days of Henry and Webster, when speaking on questions the decision of which involved the most momentous consequences to his country, the orator could not have been expected to speak temperately, for his words came red-hot from his heart.

In these days, however, the great majority of questions that come up for decision turn on masses of contradictory testimony on matters relating to everyday business or social life, and the vehemence of a Burke or a Demosthenes would be very much out of place. In its stead we now have displayed by our leading advocates a happy facility of dealing with tangled or complicated facts, combined with keen ingenuity and skill, sound judgment, and a power of clear, logical, luminous statement.

The up-to-date advocate who can thus present his case on the facts with precision and clearness is bound to win in the long run.

I shall never forget a story told me by the late Recorder Smyth which I think has enabled me to win many a difficult case. William A. Beach had made one of his impassioned speeches in behalf of a prisoner whom he was defending in the recorder's court. He retired to the corridor of the courthouse for some fresh air, and was peering in through the court room door, when an enthusiastic admirer came up to him and congratulated him on his eloquent address to the jury, which could not fail to acquit the prisoner. "My friend," said Beach, "you fail to observe that the district attorney, who is now replying to me, is reading the *stenographer's minutes of the testimony to the jury*; after that there can be no acquittal."

Hence the "sound and fury" of the ancient orator is now seldom heard in our country, and except on rare occasions, the modern advocate "deals in facts rather than in fancies, in figures of arithmetic rather than in figures of speech."

Avoid too Flowery Language

In this connection attention is called to the danger of using too flowery language in "summing up." I cannot better emphasize this point than in the language of Dr. Hall, who once wrote:

"If I were upon trial for my life, and my advocate should amuse the jury with tropes and figures, burying his argument beneath a profusion of metaphors, I would say to him: 'Tut, man; you care more for your vanity than for my hanging. Put yourself in my place; speak in view of the gallows, and you will tell your story plainly and earnestly.' I have no objection to a lady's binding a sword with ribbons and studding it with roses when she presents it to her lover, but in the day of battle he will tear away the ornaments and present the naked edge to the enemy."

Another good illustration of the danger of using too florid speech is afforded by the story of an English barrister who, having made the mistake of using too flowery language in addressing a hard-headed English judge (when such speech was in bad taste and wide of the issues before the court), was impatiently rebuked by his Lordship, who remarked, "I advise you, sir, to pluck a few feathers from the wings of your imagination and stick them in the tail of your judgment."

Cultivate the Art of Speaking Well

Of course, it is the ambition of all advocates to speak well. They recognize with Cicero that it is "most glorious to excel men in that in which men excel all other animals." Eloquence, it is true, like a genius for music or invention or painting, is primarily a gift born with a person, but, like all other divine inheritances, it is a gift which needs to be assiduously cultivated and developed. It is, therefore, a matter of regret that so little attention is paid in our colleges and law schools to this branch of education. For, surprising as it may seem, the one thing most neglected in our law schools is the art of speaking in a tone and manner attractive to, and easily understood by, a court or jury.

Lord Chesterfield went so far in his letters to his son as to tell him that every

man of fair abilities might be an orator. The vulgar, he said, look upon a fine speaker as a supernatural being and endowed with some peculiar gift of heaven. He himself maintained that a good speaker is as much a mechanic as a good shoemaker, and that the two trades were equally to be learned by the same amount of application. But by the term "orator," Chesterfield evidently meant a pleasing and persuasive speaker.

Henry Ward Beecher, in writing on the study of oratory, says:

"Now, in regard to the training of the orator, it should be a part and parcel of the school. The first work is to teach a man's body to serve his soul. Grace, posture, force of manner, the training of the eye that it may look at men, and pierce them, and smile upon them, and bring summer to them, and call down storms and winter upon them; the development of the hand that it may wield the scepter or beckon with sweet persuasions;—these themes belong to men. And, among other things, the voice,—perhaps the most important of all and the least cultured. What multitudes of men there are who wear themselves out because they put their voice on a hard run at the top of its compass, and there is no relief to them, and none, unfortunately, to the audience. But the voice is like an orchestra. It ranges high up and can shriek betimes like the scream of an eagle; or it is low as the lion's tone; and at every intermediate point is some peculiar quality. It has in it the mother's whisper and the father's command. It has in it warning and alarm. It has in it sweetness. It is full of mirth and full of gayety. It glitters, though it is not seen, with all its sparkling fancies. It ranges high, intermediate, or

low, in obedience to the will, unconscious to him who uses it; and men listen through the long hour, wondering that it is so short, and quite unaware that they have been bewitched out of their weariness by the charm of a voice, not artificial, but by assiduous training made to be his second nature. Such a voice answers the soul and is its beating."

In this connection it is interesting to note that Beecher himself placed himself, when at college, under a skilful teacher, and for three years was drilled incessantly, he says, in posturing, gesture, and voice culture, and continued the same studies afterwards at the theological seminary.

Largely because of the lack of such a training there is a large number of dull, uninteresting speakers that we hear in our courts every day, wearying their juries with their pointless, endless speeches, delivered in monotonous, meaningless, sleep-producing tones, accompanied by the most inappropriate gestures, and burying their evidence under an avalanche of words and ambiguities. How little have they learned of "the divine art which harmonizes language till it becomes a music, and shapes thought into a talisman!"

Indeed, many lawyers try to be eloquent without knowledge, regarding speech as "something given to man to disguise his thoughts." They indulge in what are not inappropriately called "mouthfuls of wind," and appear, when speechmaking, to have followed Rousseau's receipt for a love-letter,—“to begin without knowing what you are going to say, and to leave off without knowing what you have said.”

(To be continued)



The Editor's Comments

Case and Comment

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Edited by Asa W. Russell

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Vacation Time

THE courts are silent. Dust is settling on the venerable tomes of the law. Justice, which neither slumbers nor sleeps, is decidedly somnolent.

Bench and bar are responding to the "call of the wild," to the lure of rod and paddle, racket and golf-stick.

The waters call, the mountains invite, the forests beckon, and we instinctively yield to their allurements. Only in this way may we gain that "sound mind in a sound body" which has been the ideal of human excellence for ages.

The long, golden summer days are replete with vitality which we may drink in, and hereafter expend in the exhausting labors of an arduous profession.

Draw close to Nature,—the life-giving mother of us all. Be a big goodnatured boy during July and August, and you will be a better and more forceful man for the balance of the year.

Law and the Classics

COURTS of law, says the Minneapolis Journal, have given small evidence of literary perception, as a rule. Witness that judgment of a Federal court enjoining Rostand as a plagiarist of the intellectual product of Samuel Eberly Gross,—a judgment that would justify all the strictures of Shakespeare on the dullness of judges, all the satire of Dean Swift on the folly of judicial determination. But in literary issues there is in St. Paul a Daniel come to judgment, who rules that as Balzac is now a classic by the verdict of eighty years, he will not hold against Balzac's works on the score of their immorality.

We venture to believe that this particular judge is a Balzacian, as was the late John Hay, according to Roosevelt. To be a Balzacian, one does not have to like or even to read all that Balzac wrote. Some of it is not in good taste, not to mention morals, but the same must be said of every great writer,—Shakespeare, Goethe, Voltaire.

For a court of law, or for anyone else, however, to venture to expurgate Balzac or Homer, or the Old Testament, for that matter, would be a work of egregious supererogation.

There is a law of prescription as regards real estate. Prescription runs in literature also. Every generation cannot undertake to expurgate, according to its particular code, every classic, before that classic is permitted to be read, printed, circulated.

All meat is not meat for children.

Some meat is not even for strong men. From life itself we learn to reject that which is unpleasant and harmful. The same practice must be pursued with literature.

The adjudication which the *Minneapolis Journal* so strongly commends is not without judicial precedent. In 1894 the New York supreme court, in *Re Worthington Co.*, 24 L.R.A. 110, held that *Payne's Arabian Nights*, *Fielding's Tom Jones*, the works of *Rabelias*, *Ovid's Arts of Love*, the *Decameron* of *Boccaccio*, the *Heptameron* of *Queen Margaret of Navarre*, *Rousseau's Confessions*, *Tales from the Arabic*, and *Aladdin*, are not so immoral that a receiver will be prevented from disposing of them when found among the assets which come into his hands. In support of this decision the court said: "It is very difficult to see upon what theory these world-renowned classics can be regarded as specimens of that pornographic literature which it is the office of the Society for the Prevention of Vice to suppress; or how they can come under any stronger condemnation than that high-standard literature which consists of the works of *Shakespeare*, of *Chaucer*, of *Laurence Sterne*, and of other great English writers, without making reference to any parts of the Old Testament Scriptures, which are to be found in almost every household in the land. . . . It would be quite as unjustifiable to condemn the writings of *Shakespeare* and *Chaucer* and *Laurence Sterne*, the early English novelists, the playwrights of the Restoration, and the dramatic literature which has so much enriched the English language, as to place an interdict upon these volumes, which have received the admiration of literary men for so many years. What has become standard literature of the English language,—has been wrought into the very structure of our splendid English literature, is not to be pronounced at this late day unfit for publication or circulation, and stamped with judicial disapprobation as hurtful to the community."

Most of our judges are scholarly men who have supplemented a deep knowledge of the law with a broad acquaintance with the world's best literature. No-

where could a body of men be found more competent to pass upon the merits of the products of the greatest literary genius or one whose verdict would be more consistent with good taste, law, morality, and expediency.

Cruel and Unusual Punishment

CRIMINAL lawyers throughout the country are said to be agitated over the action of the Supreme Court of the United States in inaugurating what is designated as a new era in the punishment of criminals,—that of requiring punishments to be proportionate to the offense. The agitation among the legal profession arises from a recent decision which may be found among the New Decisions in this number, in which the law, for the first time in its history, set at liberty a person convicted of an offense, because there was inflicted upon him "a cruel and unusual punishment." It was in the case of *Paul Weems*, an official in the lighthouse service in the Philippines. His case came under the Bill of Rights of the island. The court announced that it must give the same interpretation to that Bill of Rights as is given to the 8th Amendment to the Constitution. Thereupon, it proceeded to construe this amendment, prohibiting "cruel and unusual punishments."

It was admitted that, in the musty precedents of the past, the English-speaking people used this phrase only to prohibit the resort to inhuman methods for causing bodily torture. It was used to prevent disemboweling traitors and burning alive women who committed treason. The court decided to regard these precedents as milestones in the advance of civilization, and not as limitations on the phrase. "In the application of a Constitution," said Justice McKenna, in announcing the decision of the court, "our contemplation cannot be only of what has been, but of what may be."

Much speculation exists as to the effect of the decision. That it will apply to the territories and the District of Columbia is not doubted. The court has determined that the 8th Amendment is not applicable to the states, and hence the states will not be compelled to follow the new prin-

ciples. A flood of applications for the release of prisoners sent to the penitentiary by the Federal courts, on the ground that their punishment was not proportionate to their offenses, may result from the decision.

The Lawyers and the Law

JUDGE John D. Lawson, in the *Journal of Criminal Law*, is credited with this biting expression: "If all the professions were as far behind the times as the legal, we still would be using the sedan chair and horseback messengers, instead of railroads and telegraph lines. The legal profession is the only one in the last century that has learned nothing and forgotten nothing. We have not advanced one step since the days of Queen Elizabeth."

"But," comments the *Columbia* (S. C.) State, "Is not that quite natural? If 'Sergeant Buzfuz' had anything in stock, it was an innumerable assortment of maxims and precedents, bewildering and apparently contradictory as viewed by the lay mind, but well ordered, nicely adjusted, and ready for instant application by his own. Were all the statutes to be repealed by a single act, what would become of the lawyers,—the young gentlemen who have spent some thousands of dollars in preparing themselves to straighten tangled skeins? The aim of science is to generalize, to order and simplify, but is it not true that the legal profession multiplies complexities? Is not what a lawyer ecstatically pronounces a 'beautiful point' often an exquisite bit of foolery? The sewing machine and the bicycle of thirty years ago have been consigned to the junk heap; in an American city a twenty-two-story steel-framed building, which was a world's wonder when it was built, a little while ago, is being wrecked because the room is needed for a better; but a statute of King James's or King Charles's time, worm-eaten, unwieldy, unfitted for the purposes of a new day, is seldom if ever abolished, but its poor carcass is plastered and poulticed with a thousand new legislative

amendments so that it may be productive of fee earning disputation. The lawyers are keen-witted; at parry and thrust they are adept; but the crux of Judge Lawson's indictment is that the profession is deadening to the constructive faculties."

The assertion has often been made that the lawyers deliberately use their influence in the matter of legislation, to render the law as complicated and confusing as possible, on the theory that such a condition is more conducive to complicated and profitable litigation. "While such a charge deserves no notice," observes Mr. Justice Angellotti in a recent address, "it is probably true that the profession as a whole has been negligent in not giving more attention to this matter. In this commercial age the busy lawyer, like the busy member of any other profession or calling, is often so engrossed with his own personal and business affairs that he has little time or disposition for the service of the state or his profession."

While the legal profession is not the law-making power of our government, national or state, by reason of their more adequate knowledge as to what is necessary to make the law accord with what is right and essential to the doing of justice under the conditions existing in their own time, and by reason of the influence which they must have if they live up to the traditions of their profession, lawyers can and should be a great factor in the making of proper laws. They undoubtedly will be held responsible for the condition of the law, although they did not constitute the direct law-making power. As was well said by a recent writer on this subject: "It may be confidently assumed that there is no disagreement among us on the proposition that our profession, as well as any other, is the responsible battalion for those interests of the day and generation in which it specializes. We can conceive of no higher duty on the part of lawyers than that of making every legitimate effort to procure the enactment of such laws as are essential to the perfecting of our system and the making it adequate to the ideas and demands of our age."



Among the New Decisions

A brief review of recent important or novel decisions made
by the courts of the English speaking world.



Protest by owner as preventing acquisition of right of way by prescription.

To establish an easement of private way over land by prescription, says the court in the recent West Virginia case of *Crosier v. Brown*, 66 S. E. 326, the use must be continuous and uninterrupted for the necessary period, under a bona fide claim of right adverse to the owner of the land, and with his knowledge and silence. If the use is by his permission, or if he opposes and denies the right, title to the easement does not arise by such use. This doctrine is not without considerable support in the earlier decisions, as disclosed by the note which accompanies the *Crosier Case* in 25 L.R.A. (N.S.) 174, although there are probably an equal number of cases which have adopted the opposite view.

Appeal from order appointing guardian for alleged incompetent.

It has been heretofore determined that "aggrieved persons," within the statute allowing an appeal by such persons in proceedings for the appointment of a guardian for an alleged incompetent, are only those who have legal rights in the estate of the incompetent. The authorities on this question are reviewed in a note in 25 L.R.A. (N.S.) 155, accompanying the recent Wisconsin case of *Re Carpenter*, 123 N. W. 144, in which it is held that a non-resident sister of an alleged incompetent person, whose petition for the appointment of a guardian is denied, is not a person aggrieved, within the meaning of a statute regulating the right to appeal, since none of her legal rights are infringed, she having no right to control the custody or conduct of the alleged incompetent, nor any right to support from, or duty to care for or support, him, and no legal rights in or to his property.

Void or unfounded claim as subject of valid compromise.

Where two parties enter into an agreement concerning a sum of money due from one to the other, and a note is given for the amount agreed upon, it is held in the New Mexico case of *Amijo v. Henry*, 89 Pac. 305, that such note is not void for failure of consideration, in whole or in part, where there was no fraud or mistake, and where each of the parties had the same means of ascertaining the validity of the amount claimed by the payee in the note. The report of this case in 25 L.R.A. (N.S.) 275, is accompanied by a subject note, which presents an exhaustive view of the authorities upon the question, from which it may be concluded that a void, invalid, or unfounded claim may be the subject of a valid compromise whenever the circumstances and conditions upon which all valid compromises depend concur, and the invalidity of the claim compromised does not rest in a violation of law.

Violation by citizen of decree against municipality as contempt.

A question not previously passed upon by the courts was presented by the recent case of *State ex rel. Jackson v. Pittsburg*, 80 Kan. 710, 104 Pac. 847, 25 L.R.A. (N.S.) 226, holding that all concerned in the carrying out of an arrangement whereby a number of saloon keepers raised a fund from which they for a time paid the salaries to some of the city's officers and employees, in order to evade the effect of a final judgment ousting the city from the exercise of the unwarranted power of (in effect) licensing the sale of intoxicating liquors under the guise of collecting fees by simulated prosecutions for violation of the prohibitory law, were guilty of contempt of court, whether or not they were regarded as having violat-

ed an injunction directed against them. There are many cases holding that the violation of such a decree by an officer, agent, or servant of a municipal corporation, will constitute contempt of court.

Bucket shop transactions as "game of hazard" or "gambling device." Transactions in a bucket shop, consisting of fictitious contracts of sale or purchase for future delivery of stocks, with the intention that there should be no delivery, but a settlement by paying the difference in prices, are held not a "game of hazard," in the recent Nebraska case of *Ives v. Boyce*, 123 N. W. 318; nor is a telegraph wire, blackboard, and ticker used by the broker in obtaining and publishing the rise and fall of prices in the New York market a "gambling device," within the meaning of the Nebraska Code. This question seems to have been seldom passed on by the courts, and this may be due in a measure to the fact that in some jurisdictions bucket shops are expressly prohibited, while in others the dealing in futures or margins is expressly forbidden. The tendency of the few cases dealing with the subject, as appears in the note accompanying the *Ives* Case in 25 L.R.A.(N.S.) 157, seems to be to fortify the position taken by the court in that case. The closely allied question whether a bucket shop is a "place for gaming" is treated in a case note appended to *Wade v. United States*, 20 L.R.A.(N.S.) 347.

Cruel and unusual punishments. A majority of the justices of the Supreme Court of the

United States hold in the recent case of *Weems v. United States*, U. S. Adv. Sheets, p. 544, that cruel and unusual punishment forbidden by the Philippine Bill of Rights is inflicted by the provisions of the Philippine Penal Code, under which the falsification by a public official of a public and official document must be punished by fine and imprisonment at hard and painful labor for a period ranging from twelve years and a day to twenty years, the prisoner being subject, as accessories to the main punishment, to carrying, during his imprisonment,

a chain at the ankle, hanging from the wrist, to deprivation during the term of imprisonment of civil rights, and to perpetual absolute disqualification to enjoy political rights, hold offices, etc., and to surveillance of the authorities during life.

"No case," says the opinion, "has occurred in this court, which has called for an exhaustive definition of the clause forbidding cruel and unusual punishment. . . . What constitutes a cruel and unusual punishment has not been exactly decided. It has been said that ordinarily the terms imply something inhuman and barbarous,—torture and the like. *McDonald v. Com.* 173 Mass. 322, 73 Am. St. Rep. 293, 53 N. E. 874. The court, however, in that case, conceded the possibility "that punishment in the state prison for a long term of years might be so disproportionate to the offense as to constitute a cruel and unusual punishment."

The law writers are indefinite. Story, in his work on the Constitution, vol. 2 (5th ed.) § 1903, says that the provision "is an exact transcript of a clause in the Bill of Rights framed at the Revolution of 1688." He expressed the view that the provision "would seem to be wholly unnecessary in a free government, since it is scarcely possible that any department of such a government should authorize or justify such atrocious conduct." Cooley, in his *Constitutional Limitations*, hesitates to advance definite views, and expresses the "difficulty of determining precisely what is meant by cruel and unusual punishment." It was probable, however, he says, that "any punishment declared by statute for an offense which was punishable in the same way at common law could not be regarded as cruel or unusual, in a constitutional sense."

In the prevailing opinion, written by Mr. Justice McKenna, it is laid down: "With power in a legislature great, if not unlimited, to give criminal character to the actions of men, with power unlimited to fix terms of imprisonment with what accompaniments they might, what more potent instrument of cruelty could be put into the hands of power? And it was believed that power might be tempted to

cruelty. This was the motive of the clause, and if we are to attribute an intelligent providence to its advocates we cannot think that it was intended to prohibit only practices like the Stuarts, or to prevent only an exact repetition of history. We cannot think that the possibility of a coercive cruelty being exercised through other forms of punishment was overlooked. We say 'coercive cruelty,' because there was more to be considered than the ordinary criminal laws. Cruelty might become an instrument of tyranny; of zeal for a purpose, either honest or sinister."

The dissenting opinion, written by Mr. Justice White, and concurred in by Mr. Justice Holmes, concludes: "In my opinion, the review which has been made demonstrates that the word 'cruel,' as used in the amendment, forbids only the law-making power, in prescribing punishment for crime, and the courts in imposing punishment, from inflicting unnecessary bodily suffering through a resort to inhuman methods for causing bodily torture, like or which are of the nature of the cruel methods of bodily torture which had been made use of prior to the Bill of Rights of 1689, and against the recurrence of which the word 'cruel' was used in that instrument."

Right to display red flag in a procession. That there is no right to display a red flag in a procession, where those composing the procession know that the natural and inevitable consequences will be to disturb the public peace and tranquillity in violation of a statute or ordinance, is held in *People v. Burman*, 154 Mich. 150, 117 N. W. 589, 25 L.R.A.(N.S.) 251. The court observed: "The question here is not whether the defendants have, in general, a right to parade with a red flag: It is this: Had they such right when they knew that the natural and inevitable consequence was to create riot and disorder? Defendants knew this red flag was hated by those to whom it was displayed, because it was believed to represent sentiments detestable to every lover of our form of government. They knew that it would excite fears and apprehension, and that by displaying it they would provoke

violence and disorder. Their right to display a red flag was subordinate to the right of the public. They had no right to display it when the natural and inevitable consequence was to destroy the public peace and tranquillity." The case is accompanied by a note on the validity of ordinances as to street parades, which is supplemental to an earlier note upon the subject in 19 L.R.A. 858.

Measure of compensation to physician. A novel question as to the measure of compensation to a physician employed to examine and report on the physical condition of one who contemplated bringing an action for personal injuries is passed upon in the case of *Henderson v. Hall*, 87 Ark. 1, 112 S. W. 171, 25 L.R.A.(N.S.) 70, in which it is held that in an action by a physician for services rendered a lawyer in examining his client, who claimed a right of action for personal injuries, which claim was settled before the action for services was brought, plaintiff is not entitled to more than ordinary fees, on the theory that his services were extraordinary and that he might have been compelled to attend court as a witness.

Admissibility on trial of admission made to defeat continuance. This interesting question is presented in the recent North Carolina case of *State v. Butler*, 65 S. E. 993, holding that an admission by attorneys for an accused at the preliminary hearing, to prevent a continuance to enable the state to secure certain evidence, and to secure a hearing without delay, is not admissible against accused at the trial, where the state has secured the evidence which it sought. The few decisions upon this subject are collated in a note which accompanies the *Butler Case* in 25 L.R.A. (N.S.) 169, and are all in accord with the conclusion reached in that case, that an admission made at the time a continuance of either a criminal or civil case is sought is not, if the continuance is granted, admissible in evidence at a subsequent trial, when the emergency for which the admission was made has ceased to exist.

Notice to traveling salesman as notice to his employer.

An interesting question which has been but seldom before the courts was passed upon in the case of *Jenkins Bros. Shoe Co. v. Renfrow*, 151 N. C. 323, 66 S. E. 212, 25 L.R.A.(N.S.) 231, holding that notice of dissolution of a firm of customers, given to a traveling salesman, will bind his principal, where he is his sole representative in the section where the firm does business, reports references given by new customers, and dissolution of partnerships, and sometimes receives payments on account.

Corroboration of testimony of party to divorce as to mental suffering.

The ancient rule which arose in the ecclesiastical courts of England, to the effect that no divorce would be granted on the uncorroborated testimony of a party, and which exists in this country either as a rule of common law or by statute, does not apply to testimony in relation to mental suffering of a party, as appears by a note in 25 L.R.A.(N.S.) 45, which sets forth the few authorities which have dealt with the question, and which accompanies the case of *MacDonald v. MacDonald*, 155 Cal. 665, 102 Pac. 927, holding that corroboration of the testimony of plaintiff in a divorce proceeding as to the infliction upon him of grievous mental suffering by defendant's acts, is not required by a statute providing that no divorce can be granted upon the uncorroborated testimony of the parties.

Money decree for permanent alimony as lien on real property.

The question whether a decree for alimony operates as a lien on real property involves several considerations. On the one hand it is evident that, although a court may have the power to create a lien, it does not necessarily follow that the decree would constitute a lien if not declared to be such. On the other hand, if the decree operates *per se* as a lien, it is immaterial whether the court may declare a lien. It is conceivable, however, that a decree in gross may be held to be *per se* a lien, and a contrary holding be properly made as to a decree

for continuing alimony. In the recent case of *Scott v. Scott*, 80 Kan. 489, 103 Pac. 1005, 25 L.R.A.(N.S.) 132, it is held that an allowance of permanent alimony, payable in instalments, does not create a lien on any property of the husband, unless the record affirmatively discloses that the court intended it to have that effect, notwithstanding the statute makes judgments liens on the real estate of the debtor. The court bases its decision upon the principle that where alimony is ordered to be paid in instalments, and nothing is said as to the manner of its collection, the fair inference is that the court intends the order to be enforced not by lien and execution,—a remedy manifestly ill adapted to the purpose,—but by attachment for contempt, if payment is not made,—a remedy always available.

Substitution of new juror in criminal case for disabled or incompetent one.

If a juror in a criminal case becomes disabled or incompetent after the full jury has been impaneled and sworn to try the case, the proper procedure at common law, according to the established precedents, appears to be to discharge the entire panel and form a new jury. The discharge of the other eleven, however, may be waived by the accused, and is declared unnecessary by statute in some jurisdictions. But where the juror was incompetent at the time he was accepted, a competent jury never having been organized, he may be set aside without discharging the entire jury, and his place filled by a juror who is competent. This interesting question is discussed in the recent Mississippi case of *Dennis v. State*, 50 So. 499, in which it was held that when a juror becomes insane pending the trial of a criminal case, the court must declare a mistrial, and proceed *de novo*, and it is fatal error to substitute another juror, and proceed with the trial, if proper objections are taken to such proceeding. This decision is in conformity with the well-established rule which prevails in the absence of special statutory enactments, as appears by the authorities upon the question, which are viewed in a note in 25 L.R.A.(N.S.) 36.

*Liability of estate to Services per-
attorney employed by formed by an at-
executor or ad- torney for the
ministrator. benefit of an es-
tate, at the in-*

stance and request of the personal representative, are, by the weight of authority, individual obligations of the personal representative, and not primarily a claim against the estate, subject to certain exceptions based upon the insolvency, death, removal, or resignation of the personal representative, or upon the effect of an agreement giving the attorney a lien upon the subject-matter in litigation. This general rule is upheld in the case of *Brown v. Quinton*, 80 Kan. 44, 102 Pac. 242, in which it is laid down that attorneys employed by an administrator to assist him in administering his trust, or to prosecute or defend an action for or against him in his official capacity, have no claim they can enforce directly against the estate, but that the administrator is individually liable for such services, and upon settlement of his accounts he may be reimbursed out of the estate for attorneys' fees necessarily paid out as expenses of the administrator. There are, however, as appears by the note which accompanies the report of this case in 25 L.R.A.(N.S.) 71, many respectable authorities which sustain the right of an executor or administrator to bind the estate for reasonable attorneys' fees necessarily and properly rendered in preserving the estate, or where otherwise beneficial to it.

*Injunction against for- The rule at first
eign suit. was that an in-*

junction would not lie to estop a suit in a foreign court, but the later doctrine is that, although the chancery court cannot act directly to estop a suit prosecuted in another country, it may grant an injunction operating directly upon the person who attempts to prosecute such suit, if that person is properly within the jurisdiction of the court. The more recent cases all recognize the right of the court to grant an injunction restraining persons within its jurisdiction from prosecuting actions in foreign courts, and the question is rather

when and under what circumstances equity will grant an injunction for this purpose. The power is used sparingly, and the petitioner must show good equitable grounds, or the injunction will not issue. This question was presented in the case of *O'Haire v. Burns*, 45 Colo. 432, 101 Pac. 755, holding that a citizen of a state will be enjoined by its courts from instituting a suit in another state against another citizen, both parties at all times residing within the state, upon a cause of action which has been adjudicated by such courts, and arose within its jurisdiction, the necessary witnesses being all there, and the foreign suit being instituted for the purpose of harassing and annoying the other party, and the plaintiff being insolvent. This case is accompanied in 25 L.R.A.(N.S.) 267, with a note in which the recent cases are considered, and which is supplementary to a note in 21 L.R.A. 71, in which the earlier cases are discussed.

*Restraining erection The right of a
of contagious dis- property owner to
ease hospital. complain of the lo-*

cation of a contagious disease hospital in the neighborhood came up for further consideration in the recent Kansas case of *Manhattan v. Hessin*, 105 Pac. 44, 25 L.R.A.(N.S.) 228, dissolving a temporary order of injunction issued at the suit of a citizen to restrain the municipality from using as a pesthouse a building situated in a public park, and standing 500 feet from his residence, where the disease appeared among students, large numbers of whom were located in rooming houses throughout the city, and increased to such an extent that the health officers were unable to control or diminish the contagion by the ordinary methods of quarantine, and no other building than the one sought to be made use of and suitable for such a purpose could be obtained in the city. The earlier decisions upon the subject are reviewed in a case note in 5 L.R.A.(N.S.) 1028. There seems to be an irreconcilable difference of opinion among the authorities as to the right of a property holder to object to the location and

maintenance of a pesthouse or a hospital for the treatment of dangerously contagious diseases so near his property as to work him unmistakable injury.

Failure of insurer to act after notice of breach of policy as waiver. The secret of most of the apparent lack of harmony in the cases on this subject is that the

terms of insurance policies differ so that a ruling upon one contract may not be applicable to another. If the rights of the parties have become fixed by loss before the insurer acquires knowledge of the breach, no court has held that mere silence or nonaction on its part will help the insured. If the policy is deemed to be void upon breach,—if the forfeiture is considered self-executing,—no court has held that the insurer must bestir himself to declare the forfeiture. The conflict is on the question whether policies declared in terms to be void upon breach are really void or voidable, that is, void at the election of the insurer, or not. In the recent case of *Phenix Ins. Co. v. Grove*, 215 Ill. 299, 74 N. E. 141, it is held that notice to an insurer, or its agent for receiving such notice, of additional insurance, and its failure to object, or to cancel the policy because thereof, is a waiver of the provision in the policy rendering it void in case of such additional insurance unassented to in writing by the insurer. The cases dealing with the question are exhaustively treated in a subject note appended to the case in 25 L.R.A.(N.S.) 1.

Leaving live wire in unoccupied premises as negligence. The case of *Wheeler v. St. Marylebone Borough Council*, tried in

June before Mr. Justice Grantham and a special jury, is, we believe, says the *Law Journal*, the first case which directly raises the question of the negligence of an electric lighting authority in leaving a "live" wire in unoccupied premises. The house in question had been vacated, and was to be pulled down and rebuilt. The housebreakers gave the usual notice to disconnect the current, the meter having been removed by the defendants when the late tenant left. Everyone seems to have been under the impression that this had been done, but it transpired that the servants of the council had left the service cable in the cellar, because they had heard that the cellars were not coming down, and the same cable could be used in the event of a future tenant requiring the electric current. They sealed up the ends, but did not disconnect the current. The plaintiff, who was about to re-tile the cellar, found the cable coming through the wall, and, thinking it was an ordinary piece of pipe, proceeded to cut it off. He thereby created a short circuit, and was nearly burnt to death. The defendants alleged that the accident was due to the plaintiff's own negligence,—that he should have known the protruding tube was an electric cable; and, furthermore, they alleged that they had adopted the only possible means of rendering it safe. We cannot help thinking that the jury took the correct view when they negatived both these defenses, and returned a verdict for the plaintiff.





New or Proposed Legislation

A glance at the labors of our lawmakers.



Odd Laws in Aid of Health or Morals.—Texas and Kansas have been prolific in freak legislation, and, says the Record-Herald, almost anything in the way of prohibitory laws may be expected from those states. In Kansas there is a statute requiring individual glasses or cups to be used at every well, every ice-water cooler, in railway cars, and wherever the public is permitted to drink water from a common fountain. The person in charge is liable to a heavy fine in case he permits two people to drink from the same cup or glass, and, as a consequence, on the railway trains the drinking utensils are taken away as the borders of Kansas are reached, and the passengers have to supply their own cups. This law is supposed to be necessary as a sanitary precaution, to prevent the spread of infectious diseases.

In New Mexico a bill was introduced in the legislature last winter providing that all persons desiring to drink at a bar should take out licenses by paying a fee of \$2, the proceeds of which are to be devoted to education; and any saloon keeper or bartender supplying a drink of beer, wine, whisky, or other liquors to a customer who cannot show a license is to be punished by a fine of \$25 for each offense. It is estimated that the license fees under such a law will practically support the public schools of the territory.

A bill has been introduced in the Texas legislature imposing a fine of \$5 upon every person who uses profane language over a telephone.

The legislature of Porto Rico has passed a bill requiring everybody to wear clothing, under penalty of \$2 or one day's imprisonment for every offense. It is customary for the natives in Porto Rico, as well as in all the other tropical coun-

tries, to strip down to the buff, or rather to the tan, in that particular case, while engaged in manual labor. Workmen seldom wear more than a pair of cotton drawers or trousers, a pair of sandals and a straw hat. Their naked busts and shoulders are considered an offense to the public eye, however; so in Porto Rico it is proposed to make everybody wear a shirt.

The Bulgarian sobranje, or parliament, has passed a law taxing bachelors over twenty-one years of age \$2 a year, the proceeds to be devoted to education. Such a law has been in force in Salvador for many years.

A statesman named Hill introduced a resolution in the Texas legislature requiring lobbyists to carry whistles, and to blow three shrill blasts before approaching a member of the legislature, in order to attract the attention of bystanders. The idea is to prevent unobserved communication between promoters of legislation and statesmen who are subject to temptation.

No Longer "Free as Air."—American air is not to be free, says the Cleveland Plain Dealer. It is to be put under legal restraint. The Senate has passed a bill to regulate wireless telegraphy, and to compel all wireless telegraphers to procure licenses and act under Federal control. If the House concurs in this measure, it will soon be an offense for anyone to monkey with the atmosphere.

At present there are many amateur wireless telegraphers in the United States. Some of them are mere boys, whose mechanical turn of mind has taken this form of expression. These young enthusiasts are not only able to read all weighty government messages, but they also, it is said, seriously interfere with transmission. The wireless, at any rate,

has become so important that the Senate believes it is time to stop having it used as a plaything.

Probably some such regulation as that proposed by the Senate bill is wise and desirable. One of the chief drawbacks of the Marconi system has been its complete lack of privacy. Almost anyone can set up his receiving apparatus, and read all the flying messages. Cipher codes may be used, but even then it would be difficult to assure secrecy, for many ciphers may be solved by men who turn their attention to such problems.

It is difficult to see how the proposed law will remedy the existing difficulties. It may help some, and may put some schoolboys out of business, but the task of regulating and controlling the air looks too big even for the great American government. Wireless wire tapping is so easy and simple that a large army of detectives would be required to keep the air clear of eavesdroppers.

Tenement Legislation.—"In Indiana lives a woman who does not write plays or poetry or novels, but who as an author is fast coming abreast on fame's path with that state's best literary pioneers," says a writer in Hampton's magazine for June. "She has written only one work, but that has placed her in the front rank. She is the author of a housing bill that is revolutionizing tenement conditions in Indiana.

"Mrs. Albion Fellows Bacon is a little slip of a woman, the mother of four children,—with one daughter inches taller than herself,—who lives quietly at Evansville. Some years ago she came to the conclusion that in many cities the tenement conditions were just as impossible as in New York. This, and that four walls never make a home, she discovered by friendly visits in her native town. The slum conditions of the smaller cities were, she found, deplorable. And then, being a woman of sincerity and energy, she set to work.

"With her, charity began at home. Evansville was a fertile field. She interested her townspeople by personal appeal, and, with the Monday Night Club at her elbow, engineered a city ordinance to do away with slum conditions in Evansville. With alacrity the city council pigeonholed it. Mrs. Bacon rescued it, and finally it was made a part of the city building law. Then she began to look around; she began to write letters to everybody who could help, from the one hundred and fifty secretaries of Associated State Charities to Jacob A. Riis. All this in her own home and with a family to care for. At last her labor flowered; in January, 1909, her bill to alleviate tenement conditions was presented in the Indiana legislature. It attracted little attention, and was about to be shelved quietly, when Mrs. Bacon appeared in person before the legislature, and made such an eloquent plea for it that the bill was passed. One of her sentences became a battle cry. 'We protect men in mines and in railroads and in factories, but we do not protect them in their homes.'

"The bill covers the tenement question in a remarkable way. The tenement problem in a city of 25,000 demands entirely different handling from the tenement problem in a larger city. Mrs. Bacon's bill declares, for instance, that no tenement hereafter shall occupy more than 65 per cent of a lot, or more than 85 per cent of a corner lot, and that it must not be higher than once and a half times the width of the street, on which it stands. It also provides that the building must have a rear yard at least 15 feet deep, and that no rear tenements shall be erected. In the future, in every tenement erected in Indiana there must be one room of 120 square feet, while other rooms must contain at least 70 square feet of floor area, and must not be less than 9 feet high. Sanitary provisions are also arranged for.



Bar Associations

A glance at topics discussed at recent Bar Association Meetings



Criticised Executive Power.—Judge Alton B. Parker, in an address before the New Hampshire Bar Association, on "The Lawyers' Opportunity for Patriotic Public Service," criticised the executive branch of the Federal government and claimed that of late that department had been seeking to augment its powers.

"By proclamation and other acts," said Judge Parker, "the executive power has been showing its impatience of the constitutional restraints, and its hostility to the department of the government which enforces them. Where are the chief executives of the states who are striving hard to preserve the home rule of their states, which the chief executive is seeking to take away?"

"We have a chief executive in New York who is imbued with a belief in the necessity for such action, and endowed with courage to undertake it. But we are soon to lose him."

Defense of Powers of Congress.—Vigorous defense of the theory that the national government should regulate the issuance of stocks and bonds by interstate railroad corporations was made by Attorney General George W. Wickersham before the Illinois State Bar Association at its thirty-fourth annual convention.

"Congress assuredly may regulate and restrain the state corporation in the exercise of these powers (to issue securities), and may prohibit it from issuing obligations or stock for any purpose relating to interstate or foreign commerce, except in accordance with rules or restrictions prescribed by it for the purpose of preventing such evils as watered stock," said the Attorney General.

Reference was made by Mr. Wickersham to the condemnation, both by courts and economists, of the reckless issue of stocks and bonds by railroad companies

without adequate consideration, which, he declared had come to be generally regarded as an evil, certainly as demoralizing in its effect on the public as the carriage of lottery tickets from one state to another.

The twenty years' period of railroad receiverships and foreclosures testified eloquently, he declared, to the practical effect of such unwarranted issues of securities upon the ability of railroad companies to properly perform their functions as instrumentalities of interstate commerce; while the utterance of stock for inadequate or fictitious consideration had furnished the opportunity for the most irresponsible and speculative control of these highways of commerce, and had resulted in the injury which always followed a control of property by those who had no real investment in it.

Such control, Mr. Wickersham continued, all experience demonstrated, would not be generally exercised in the interest of the road, and to insure the safe, conservative management necessary to meet the requirements of the public, and the proper discharge of the obligations imposed upon the carrier by law. On the contrary, it was almost inevitable that such control would be employed for purely speculative purposes, and to secure immediate profit to those in temporary control.

It was this public aspect which lent force to the conviction that "watered" and "bonus stock" was one of the greatest abuses connected with the management of corporations, and it was this effect upon the fitness of the carriers to perform their duties under national legislation that required and justified Federal supervision and control of the subject.

Lawyerization of Courts.—"The courts to-day are lawyerized," said President

Edgar A. Bancroft at the meeting of the Illinois State Bar Association. "Lawyers have so strenuously protested whenever the court has been a real factor in the conduct of a trial, and it resulted against them, that the judges are generally little more than mere moderators between contesting lawyers. . . .

"The strenuous character of modern business life shows itself in the temple of justice. Clients, as well as lawyers, regard litigation as a battle to be won at all hazards. How different from submitting, with fairness the controversy, to be decided calmly by the court.

"A change, and an early change, is demanded, and will certainly come. If the bar does not meet the demand with skill and fairness, in the spirit of simplicity and directness, the change will come in another form, with the probability of creating as many evils as it cures. . . .

"There are two rules," continued Mr. Bancroft, "which seem to be fundamental: (a) The first and last word in all procedural improvement should be simplicity; (b) that no present method should be discarded because it is old, or supplanted with a different method merely because it is new. The old should remain, unless it is unnecessary or ineffective, or is supplemented with a better."

Demand for Reformed Procedure.—"Present methods of judicial procedure in Illinois are barbarous and farcical and a menace to widow and orphan."

"Some members of the Illinois bench think they are infallible, and their 'arrogance' is responsible for mistrials and the high cost of litigation."

"There are more miscarriages of justice in Illinois than in any other state."

These are some of the charges hurled back and forth in the evening sessions of the Illinois State Bar Association, in which one man, F. E. Burton, suggested that one way to hasten justice would be to appoint a business man to sit on the bench beside various judges, and give suggestions.

Justices of the Illinois supreme court, besides others from the supreme bench of Indiana, Wisconsin, and Michigan, were present, and the charges were bit-

terly contested, finally ending in a truce in which lawyers and judges agreed that in hearty co-operation lies the sole hope of remedying existing conditions.

It is encouraging to find the lawyers of Illinois taking up the subject of law reform. The men in charge of the programme of the Illinois Bar Association meeting have striven to direct discussion to the need of quicker and cheaper trials. The president of the association, Edgar A. Bancroft, in his opening address compared law procedure to medical practice, to the great disparagement of the former. He said: "It would be criminal malpractice to apply to a serious illness to-day the treatment of fifty years ago. In the profession of the law, in the strife-hospitals of the courts alone, are the antiquated methods, appliances, and standards still prevailing, substantially untouched by the spirit of modern life. Yet early attention to a legal dispute is sometimes as important as in a medical case. The immediate duty of finding the new and more efficient methods is upon the lawyers and the judges."

Modern Murder Trials.—In his address on "Justice Delayed is Justice Denied," delivered before the Iowa State Bar Association, ex-Governor C. S. Thomas of Colorado, vigorously criticised modern murder trials. He said: "The modern murder trial is a curious and startling evolution in 'the lawless science of the law.' The toleration of public sentiment toward the man who kills the spoiler of his home has ripened into a legal justification for homicide, and we now have the defense of 'the unwritten law.' It is but one of the many manifestations of a sort of legal insanity which frequently invests the modern murderer with complete immunity. If he can establish the suspicion of undue intimacy between the deceased and some member of his family, or prove any so-called eccentricity of his own or of an ancestor, immediate or remote, followed by any betrayal of excitement or the lack of it upon his part when the homicide was committed, which will enable his counsel to prepare a hypothetical question of ten thousand words, to be propounded to and answered by half a dozen medical gentlemen possessed

of many degrees, his chances of acquittal are more than even. . . .

"Nothing of human conduct is too absurd or too commonplace to be excluded from the hypothesis, and the defendant is solemnly declared by the expert to have been *non compos* when he killed his man, because at the time he was calm, collected, indifferent, and deliberate, or because he was impulsive, excited, passionate, and revengeful. The same facts determine experts for the defense to one conclusion, which commit those for the prosecution to its opposite. And these displays of scientific balderdash, converting court rooms into show rooms, to which crowds throng for amusement and diversion, lengthen into weeks and months, burden the public treasury with enormous expense, frequently bankrupt and always tend to the protection of the offender. The case finally goes to a jury exhausted in body and bewildered by a fantastic medley of fact, fancy, and opinion, in which the homicide and its attendant circumstances are lost to the understanding. They acquit, or stumble upon some sort of compromise verdict, announce it, and thank God for their release from an imprisonment lasting longer than the term of an ordinary convict. These things be travesties upon justice, for which public opinion, rightly or wrongly, holds our profession largely responsible, and which must give way to saner and sounder methods, if the law is to perform its normal functions, and justice be speedily, effectually, and impartially administered."

Too Many Statutes.—The enactment of thousands of useless statutes every year,

and the wide diversity of interpretation of the laws by judges, are engendering contempt for law on the part of the public, according to Samuel Kalisch, retiring president of the New Jersey State Bar Association, whose annual address was upon the "Administration of the Law as the Laymen See Us." He pleaded for a return to the great principles of the common or civil law, which he declared are the only principles which give absolute liberty and justice to the common people. President Kalisch, in his condemnation of the many useless enactments placed on the statute books every year, insisted that a halt in the plethora of law-making would also halt the growing suspicion on the part of the people that special interests have too much influence in the formation of the statutes.

"The bane and stumbling block to the progress of the common law have been and still are the statutory laws," he said. "Many of the statutes which have been passed ostensibly for the purpose of aiding the common law have succeeded rather in dimming its great principles, under which only real liberty can be secured."

The retiring president declared his belief that the greatest liberty ever enjoyed by the English people was under the proper enforcement of the common law, which granted equal rights to everybody. He blamed the dark portion of English history on the tortures inflicted on accused persons to extort confessions under the statutes made to override the common law, and declared that the uprising for Magna Charta was caused only by the desire of the people to return to the right to invoke the common-law principles.

Reading the Briefs

BY BILL BARRISTER.

When the lawyer grows uproarious
In a lengthy, windy talk,
And his logic seems laborious
And their Honors rise and walk,
Conferring with each other;
Ah! he feels a rising grief
When the judges say, My brother.
We have read your printed brief.

When the lawyer in disgust is,
And his hopes receive a shock
As he sees the high Chief Justice
Looking sidelong at the clock,
Still he feels he'll have an inning,
And indulges the belief
There's a chance that he'll be winning
Since the court has read his brief



Law Schools

Gleanings from addresses to graduates



Shepard's Advice to Young Lawyers.—Edward M. Shepard advised the members of the New York Law School graduating class to make the impression upon their clients of being loyal, devoted, and diligent. "Be very respectful to small business," said he, "for you may be entertaining angels unawares,—that is to say, clients who may bring you fees beyond the dreams of avarice."

"The question arises," he continued, "Shall a lawyer help a client violate the law? If a client comes to you, saying that he meditates breaking into a house and committing a burglary, and you help him, then you deserve the same punishment as the burglar. And the same thing is true in regard to a lawyer who helps a corporation break the law. But," he added, "it is no uncommon thing that a corporation or an individual wishes to do an innocent thing that in one way is lawful and in another is not. Then it is the duty of the lawyer to find out what is permitted by law. So while we are not to assist in things unlawful, it is for us to interpret law for our clients, and show them what is lawful in a case where one way of doing a thing may be lawful, and another way illegal."

Believe in Your Case.—Secretary Nagel, of the Department of Commerce and Labor, in his speech to the graduating class of the Law Department of Georgetown University, urged that the right side of a legal proposition is a bigger consideration than a client's fee. "We are too ready to believe that we have a right to take any case. I do not subscribe to that. It is not necessary to accept the rule that a lawyer can take any case, but there is one rule that we can accept, and that is, Don't take a case for a fee unless you believe in the case."

What Not To Do.—George A. Carpenter judge of the United States district court,

in an address at the annual banquet of the Alumni Association of the Northwestern University Law School, sidestepped a toast, "The Lawyer as He Appears to the Judge," and announced that he would describe "the lawyer as he ought to appear to the judge."

Judge Carpenter condemned a growing idea that the purpose of the courts is to act as an umpire in the battle of wits between opposing attorneys, deciding in favor of the one whose preparation is most complete, and warned attorneys not to do the following things:

Appear in court without suitable preparation. Cases often are lost because the attorney is familiar only with his own side of the case.

Lean confidentially over the bench, and speak on personal matters to the judge. The conversation is usually only about the weather, but it looks bad to the spectators, and might even influence a careful judge against the lawyer.

Forget the dignity of the court, or indulge in personalities with opposing counsel.

Quote some authority to the court, and omit some essential feature, merely because it might influence the jury against your particular case.

Unselfish Public Service.—"The work of government," said Governor Herbert S. Hadley, in his address before the Indiana University School of Law, "has but seldom been regarded as the special duty of those who were best qualified to perform it. The result has been that those who have made and executed our laws have often looked to public office as a source of private reward, and not for the purpose of unselfish public service."

"Public life in America to-day needs no parlor politicians or idle theorists to discourse upon our theories of government. It does need men of courage and education and ability to do in a practical

way all that can be done to promote the cause of good government. It does need men of education, courage, and ability, who will discharge the duties of public office as they would perform the duties of a private trust.

"I do not indulge in quixotic hope that we can ever secure the perfection of public or private morals, or entirely eradicate dishonesty, trickery, and illegality from our public service, or from any other department of human activity or thought. But I do believe that, through the influences of our colleges and our universities, there can be brought to our public life that one essential of efficient, disinterested public service, the absence of which has caused the fall of every nation that has gone to its decline through evils that come from within, and not from without."

Taught for Twenty-Five Years.—With the completion of this semester's work, says the *Ann Arbor News*, Professor Jerome Cyril Knowlton rounded out exactly a quarter of a century as a teacher of "contracts" in the Law Department of the University. When an inquisitive reporter said: "My, that's a long time to teach one subject!" the professor replied, "It's a big subject."

Professor Knowlton is the idol of the first year law men, and throughout all their three years' work, "Jerry" as he is lovingly called by every law student, holds a place peculiarly his own in their affections. He is witty, and the wit is spontaneous. One time,—this was during the good old days, when hazing was a part of the course a student took, in whatever department he entered,—there was a group of junior laws on the campus, and they had a freshman just from the plains of the golden West, and they were insisting that the freshman climb a tree. This was in broad daylight.

The freshman was stubborn, was ready to fight, and he whipped out a six shooter, and allowed that the first man who laid a hand on him was going to get plunked full of holes. He looked as though he meant it, too. Someone rushed to Professor Knowlton, who was at that time the dean of the department, and told of the threatened shooting, and Professor

Knowlton went to the balcony of the building.

"Hi, there!" said he to the westerner with the gun, "if you don't look out you'll shoot a hole clean through your diploma."

The gun was put away, the wit appreciated by both the freshman and his tormenters, and they all walked off together in the direction of "Joe's."

Independence of the Bar.—"The Lawyer's duty," said Judge Frank S. Roby, in his address before the graduates of the Indianapolis College of Law, "is to enforce the law, not to subvert or defeat it. The independence of the bar, as well as that of its members, is not limited. The lawyer must be his own man. The lawyer who permits another to order him hither and yon forfeits his right to the name. I hope each of you will have many corporate clients, never your masters. A lawyer is one thing, an employee another. Have as many railroad clients as you can, but never allow a railroad company or anyone else to put you on a level with a section man. Go to the legislature with your own recommendations and advice, if you wish to do so, but do not go because you are sent. The lawyer may defend the criminal, but he cannot, as a lawyer, connive to violate the law. He has no better right to devise methods by which to steal coal fields than he has to devise methods for stealing horses."

College Trained Lawyers.—The college trained lawyer will solve the great legal and economic questions of government this and the next generation, in the opinion of Attorney General Wickersham, as expressed in an address on "The Relation of Legal Education to Governmental Problems," delivered before the Harvard Law School Association. "He will not be the man whose only acquaintance with the principles of law and government has been derived from text-books and lectures,—such a man would not be equipped to cope with them," he said. "He must be the man who has found the 'living law' as it has been developed in the real transactions of men. Except with possible rare exceptions, the day of the plodding student who read his Black-

stone in a desultory, unmethodical, interrupted fashion from the musty shelves of some practising counselor, is over.

"The college trained lawyer of this and the coming generations, who will solve the problems of government," he continued, "is the man who has mastered the principles and doctrines of law as a science, through the selection, classification, and analysis of adjudged cases involving their application."

The Attorney General predicted that the lawyer who obtains those qualifications will be the man who can successfully cope with the great questions which will be presented for solution with the growth and expansion of this country.

Bench and Bar.—"If there is a friend," said Judge H. B. Tuthill, to the graduates of the Valparaiso University Law School, "whom the lawyers always have, it is the judge. Listen to him, not for the sake of listening, but examine minutely every word he says. If the judge asks a question, it may be to suggest a way out of your difficulty, to give you a cue which, if followed, will avert the impending disaster."

"Remember that there is no difference between big cases and small ones; you have no right to go into court unprepared. Time is precious in a court room, and the judge can't stop to dig down into a law book on every point; he must decide quickly. Always be ready to help the court by being thoroughly prepared. Every judge always has a few lawyers on whom he leans. Why? Because he has tried them out time and again, and found that they are always prepared and have all the facts at their finger tips. Their opinions are right in the majority of cases, and the judge accepts them without question. This is one of the greatest rewards of the lawyer. If it is not worth working for, then nothing is. If you expect the judge to be friendly with you, be friendly with him. It does not pay to try to trip up the court. You may do it once, but you never will again."

Must Work and Work.—"It is an old saying," said Supreme Court Justice William J. Carr, in addressing the Brooklyn Law School graduates, "that it is more easy to give advice than to practise it. Men differ much in conduct, but agree largely in counsels. There is little that I can say which is not commonplace to you. Still, a platitude has its purpose. In a large sense, all the concepts of ethics and law are platitudes. He would be, indeed, a most remarkable man, who would give us any truly original thoughts on these subjects, and their value would be likely to be in inverse proportion to their originality. You are about to start out on a career which is peculiarly arduous. You have adopted a profession which but a few men can master in its details. Even an average skill can be got only by never ending work. As men you must live, as well as learn, and the bread and butter problem will be as keen to you as to any others."

"It has been said that the chances of success at the bar are increased by poverty and struggle at the beginning. You will recall the anecdote of the great English judge who was asked by a kind father what would best enable his son to succeed at the bar, and who answered: "Cut him off with a shilling." Some of you will recall the story about that most glorious advocate, Erskine. After the great trial in court which first disclosed his gigantic powers of advocacy, he was asked what influences had inspired him to the deed. He answered, "I felt my little children tugging at my gown for bread."

"These instances are but typical, not only of the profession of the law, but of all forms of active life in this land. It is the rule that from narrow means and hard beginnings come forth the men who fill large places in public or private life. All of you wish to succeed, and there is but one rule for success for you. That is to work and work, and, above all, to live honestly."



Recent Articles in Law Journals and Reviews



Animals.

"Cruelty to Animals."—74 Justice of the Peace, 278.

Arbitration.

"A Court of Justice for the Nations."—17 Case and Comment, 53.

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"Attorneys' Liens."—21 Bench and Bar, 94.

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"Bankruptcy Law, Its History and Purpose."—44 American Law Review, 394.

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"Baseball Jurisprudence."—44 American Law Review, 374.

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"The Bœotian League."—25 Political Science Quarterly, 271.

Brown.

"The Trial of John Brown."—44 American Law Review, 405.

Commerce.

"The Power of Commerce to Regulate Commerce."—25 Political Science Quarterly, 220.

Conflict of Laws.

"The Individual Liability of Stockholders and the Conflict of Laws."—10 Columbia Law Review, 520.

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"The Making of the Constitution."—44 American Law Review, 341.

"The Three Departments of Government."—42 Chicago Legal News, 354.

"Effect of Overruling Opinion of Court of Last Resort on Rights Acquired on Opinion Overruled."—40 National Corporation Reporter, 633.

"The Income Tax Amendment."—25 Political Science Quarterly, 193.

"Inherent Improprieties in the Income Tax Amendment to the Federal Constitution."—19 Yale Law Journal, 505.

"Statutory Regulation of Trades and Professions."—3 Lawyer & Banker, 174.

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"Validity of a Contract between All the Stockholders of a Corporation for the Control of the Board of Directors."—19 Yale Law Journal, 656.

"Are Executory Contracts of Marriage Which are Not to be Performed within One Year, within the Statute of Frauds?"—70 Central Law Journal, 425.

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"*Ultra Vires* Acts of Corporations."—40 National Corporation Reporter, 596.

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"Jurisdiction of Courts in Cases of Injury to Real Property."—19 Yale Law Journal, 577.

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"Undeclared Prisoners."—74 Justice of the Peace, 266.

"The Pardoning Power."—19 Yale Law Journal, 603.

Damages.

"The Measure of Recovery upon Implied and Quasi Contracts."—19 Yale Law Journal, 609.

Declaration of Independence.

"The Declaration of Independence: What it Meant in 1776, and What it Means in 1910."—17 Case and Comment, 55.

District of Columbia.

"The Constitutional Status of the District of Columbia."—25 Political Science Quarterly, 257.

Divorce.

"The Law and Procedure in Divorce."—44 American Law Review, 321.

Flag.

"The Law and the Flag."—17 Case and Comment, 68.

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"Unsound Meat and Compensation."—74 Justice of the Peace, 301.

French Revolution.

"Economic Aspects of the French Revolution."—25 Political Science Quarterly, 328.

Homicide.

"Malice Aforethought, in Definition of Murder."—19 Yale Law Journal, 639.

Insurance.

"Suicide and Life Insurance."—22 Green Bag, 329.

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"The Conclusiveness of Judgments against Corporations on Their Members in Assessment Proceedings."—19 Yale Law Journal, 533.

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"The Next Great Step in Jurisprudence."—42 Chicago Legal News, 336; 19 Yale Law Journal, 485.

"The Ethical Basis of Jurisprudence."—19 Yale Law Journal, 564.

Labor Organizations.

"Payment of Labor Representatives in the British House of Commons."—25 Political Science Quarterly, 317.

Legal Fictions.

"The Reasons for Some Legal Fictions."—8 Michigan Law Review, 623.

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"Mandamus Commanding Inspectors of Elections to Count Votes Excluded by Misunderstanding of Election Law."—19 Yale Law Journal, 580.

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"European Intervention in Morocco."—19 Yale Law Journal, 549.

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"Rights and Remedies of General Creditors of Mortgaged Railways."—19 Yale Law Journal, 622.

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"Right of Action for Injuries Due to the Explosion of Fireworks."—17 Case and Comment, 58.

"The Supply of Dangerous Articles."—74 Justice of the Peace, 302.

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"A Justice's Oaths, Ancient and Modern."—74 Justice of the Peace, 254, 267.

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"The Defense of Payment under Code Procedure."—19 Yale Law Journal, 647.

Political Parties.

"The British Labor Party in 1910."—25 Political Science Quarterly, 297.

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"Computation of the Period of Suspension under an Instrument in Execution of a Power."—10 Columbia Law Review, 495.

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"The Harter Act and Its Limitations."—8 Michigan Law Review, 637.

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"How Shall We be Taxed."—40 National Corporation Reporter, 561.

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Trademarks.

"The Unwary Purchaser: A Study in the Psychology of Trademark Infringement."—8 Michigan Law Review, 613.

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"Public Control of Irrigation."—10 Columbia Law Review, 506.

Wills.

"Public Interest in Probate of Will. (Reimbursement to executor for expenses incurred in endeavoring in good faith to secure probate of worthless will.)"—40 National Corporation Reporter, 561.

Witnesses.

"Art in Direct Examination."—17 Case and Comment, 61.

New Law Books

"The Law of Intoxicating Liquors." —By Howard C. Joyce. (Matthew Bender & Company) Buckram. \$7.50.

This work treats exhaustively the laws regulating the manufacture and sale of intoxicating liquors. It aims rather to present that law as it stands to-day, then to consider the expediency of the various measures proposed, or to compare their relative value and benefit. There is a valuable discussion of the constitutionality of various statutes. Such topics as prohibition, the taxing and licensing of the traffic, enactments generally of a regulative and restrictive character as to the conduct of the traffic, search and seizure laws, local option laws, civil damage statutes, and prosecutions for offenses, are fully treated. The author's style is clear and pointed, and the notes

are apt and concise. The book is attractively printed, and will prove of practical value to those interested in the subject, either from a sociological or a legal standpoint.

Beecher's "Contracts in Michigan." With forms. \$4.50.

Downing's "United States Customs Tariff." 2d ed. \$2.

"New Code of International Law." By Jerome Internoscia. Published in three languages (three columns on a page), English, French, and Italian. 1 vol. \$12.

"Secret Liens and Reputed Ownership." By Abram I. Elkus and Garrard Glenn. Buckram, \$3.50.

"The Law of Real Estate Agency." By William Slee Walker. Buckram, \$6.

Lawyers as State Officers

THE inequality before the law of those unable to employ the best legal talent, and the excessive zeal of well-paid attorneys in behalf of rich clients, are among the most serious charges brought against the prevalent mode of administering justice.

A remedy for this state of affairs is being agitated. "If when the courts were established," says the Kansas City Star, "lawyers had been made officers of the state, attached to the courts by salaries, any propaganda for detaching lawyers from the court, and making it possible for the wealthy to employ good lawyers, while the poor could not afford to go to court at all,—any such propaganda would be regarded as involving the rankest injustice. It would be scoffed at or ignored. Everybody would see the fact clearly, then, that lawyers are as essential a part of the court machinery as are the judges. In other words, one part of justice, the service of the judge, is free,—paid for by the state; the other element, the service of attorneys, is a question of barter and sale. And one cannot get justice in the courts without a lawyer, any more than without a judge. . . .

Except possibly in a justice's court, which does not keep a record, a man cannot go into one of the people's courts, unless he is represented by a lawyer. That means that a lawyer is as much an integral part of the administration of justice as the judge is. The idea that a litigant would hire his own judge would be shocking,—because we are not used to it. The idea that one could hire his own lawyer would be shocking, too, if we were not used to it."

This suggestion is not likely to receive serious consideration, for some time at least. If the courts were absolutely free, lawsuits would likely become the main occupation of those litigiously minded. Nor is it at all certain that salaried attorneys would render as efficient service as those who must now maintain their professional reputation in the face of keen competition.

If all lawyers were officers of the state, their number would necessarily be restricted, and the profession of the law, which has for centuries been the arena of honorable ambition, would become the lucrative prerogative of a privileged class.



Quaint and Curious



Odd legal incidents gleaned from modern chronicles

Directed Congregation to Pray.—Judge Davis, in the circuit court held at Gallatin, Missouri, sentenced a whole congregation to pray for sixty days, and held up his decision in the "Jamesport Church Trial" until the petitions were answered.

The church got into the courts through a suit instituted by one faction of the congregation against another over the observance of the "Social Hour" on Sundays. This hour is one set apart for prayers, the reading of the Bible, mutual exhortations, and, when a minister was present, a sermon.

The plaintiffs demanded that when the minister was present, the time from 11 o'clock to 12 o'clock be given over to his sermon. The defendants insisted that this necessarily would exclude the customary social worship at that hour.

At the close of the testimony Judge Davis said to the court stenographer "Do not take this," and then struck the desk with his gavel and said: "For forty hours I have listened to the testimony in this case. Everybody else connected with the case, attorneys, evangelists, parties, and witnesses have talked, but me. Now, I have something to say,—I want every member of the Jamesport congregation to stand up. It makes no difference which side you are on." Then, when they had stood up, he continued:

"I want all of you who do not believe in the efficacy of prayer to sit down." And of course it is unnecessary to say that nobody sat down. The judge then continued:

"I have heard of everything else in this case except prayer, and I believe it would be a mighty good thing for you people to spend the next sixty days in prayers to God, and in earnest and sincere effort to get together. It is the most remarkable case I ever heard of; there does not seem to be any substantial difference between you. I think it would be better if parties were a little more yielding."

Is "Affinity" a Libelous Word?—It was decided recently by the appellate division of the supreme court that the term "affinity" is a good old English word, and is not in itself libelous.

The decision was rendered in the case of Peter Geddes Grant, a broker, who obtained a verdict for \$15,000 against a newspaper that described him riding in a touring car with an "affinity." A new trial was ordered.

In his charge to the jury the trial judge said:

"Of course, this word 'affinity' is one newly introduced into our language. It is not more than a few years old, at most, in the invidious sense in which it is now commonly used. You, of course, will have in mind, in passing upon just what was the meaning, what the ordinarily intelligent person would gather from the article. As you have perhaps heard me say in the course of argument with counsel, if the word were used now, I should charge you that it had an invidious meaning, but then it was newly coined."

In the decision of the appellate division, written by Justice Clarke, the court said:

"The defendant excepted to that part of the charge in which the court stated that the word 'affinity' now has an invidious sense as it is now commonly used, and that if it were used now it would have an invidious meaning.

"The word 'affinity' is a common English word, to be found in all English dictionaries, and in none of them to which our attention has been called is there ascribed the particular invidious meaning sought to be ascribed to the word upon this trial. Dictionary meanings, however, are not conclusive. English is not a dead, but a virile language, flexible, progressive, continually being enriched from all sorts of sources, its common speech made piquant and interesting by slang and jargon, often better understood by the man

in the street than the classic diction of its great masters.

"If, as claimed by the plaintiff, and apparently conceded by the court, a new meaning had been attached to or coined for the word 'affinity' shortly prior to the publication of the article complained of, that meaning should have been set forth in the complaint, and a special issue tendered thereof. There was no special picking out (in the complaint) of the word 'affinity,' nor was any meaning attributed thereto."

It was contended during the trial that a new and invidious meaning had been given to the word "affinity" by the publication of the articles in the newspapers of doings of Ferdinand Penney Earle, and articles published in the newspapers concerning Earle were admitted in evidence by the trial justice.

Six Cats, a Parrot, and a Dog.—Six cats, a parrot and a dog caused the separation of Valentine Yankofski and his wife; and Judge Williams, in the Superior Court at Winsted, Connecticut, granted Yankofski a divorce on the ground of desertion. Yankofski testified that his wife took her playful pets to bed with her, and when a feline raced up and down his back he kicked with foot and tongue too. She was bound she would sleep with her pets, he testified. One night, when he was tired and had retired, she came to bed with a dog and two cats. One cat, he said, began running back and forth over him from the head to foot. He kicked the cat off the bed, and his wife told him if he hurt that he was hurting her.

Yankofski said he told her he did not marry cats and dogs, but was willing to furnish her with a home and bed.

Judge Case asked John Platt, a witness, how much of a menagerie Mrs. Yankofski had when he did chores there, and the witness replied there were enough of them,—five or six cats, a parrot, and a female dog.

A Prophetic Dream.—The following is the actual experience of a member of the Los Angeles Bar: One morning a few years ago I jokingly remarked to my family at the breakfast table that I must

be going to be retained in some new probate matter, as I had had during the night a peculiar dream of the dead. Being pressed for particulars by an inquisitive daughter, I related the following:

In my dream I had been approached by my sister, who had stated to me that a very rich man, a stranger to us, had died, and if we were to get any of his money we would have "to dig it out," since he had "taken it all with him to the grave." I agreed to help her, and we thereupon procured picks and shovels, proceeded to the newly made grave, and began to dig. Our efforts from the start were well rewarded. We encountered money with every shovelful of dirt we turned. Money, money, money, paper money, silver money, gold money. Verily had he been rich, and verily had he "taken it with him to the grave." We continued our digging until we encountered the box containing the casket, which we opened. Here occurred the most vivid part of the dream; for the emaciated, cadaverous face of the unknown dead fixed its horrible image so indelibly upon my mind and memory that I shall be able to recall it for many a year. Taking out what money there was in the coffin we replaced the lid, closed the box, filled up the grave, took our money, and—I woke up. Now, of course, anybody might dream anything at any time, but what followed was certainly not a dream.

Upon my arriving at my office that morning, I was told by my clerk that a Mrs. S. had been frantically trying to get in communication with me over the telephone, and had left her number, with urgent instructions for me to call her as soon as I came in. I did not know Mrs. S. She was not a client of mine, and never had been, and, so far as I or the office force was concerned, we had never heard of her. However, I immediately called upon the number she had left. It developed that she was not acquainted with me, but had been recommended to a lawyer by my name, and she had made a mistake and gotten the wrong lawyer. She insisted, however, that her needs of an attorney were so desperate that, since I was a member of the bar, if I could only come to her at once it made no dif-

ference if I was a stranger. She gave me her address and I hurried to her home, which proved to be a palatial residence in the most select part of the city.

Answering the door bell in person, she hastily explained that her husband was at the point of death, and unless he made a new will, which he greatly desired to do, all of the estate would be lost to her and her daughter. I told her to take me to him at once, whereupon she opened some sliding doors, parted a heavy pair of rich portieres, and we stepped into a very dark bed chamber. The outline of the man on the bed was barely discernible, and I groped around to the window at the head of the bed, and threw up the blind, letting a stream of sunshine fall across his form. I took one look, and all but gasped aloud, for there on the bed, staring up into my eyes, was the self-same, identical, emaciated, cadaverous face of the unknown man in the coffin. Recovering myself, I called for pen and paper, and hurriedly drew the will, and upon his signing the same, and the affixing of the signature of the nurse and myself as witnesses, he died.

The estate proved rich, but greatly tangled and involved, and while the amount realized for fees was large, I surely had to "dig it out."

Waste by a Life Tenant.—A curious law case, that of a man fighting for the ownership of his skeleton, has just been concluded at Stockholm. Twenty years ago Albert Vystroem signed a contract with the Royal Swedish Institute of Anatomy, making over his body after death to the institution, in return for a sum of money. Since then he has come into possession of a fortune, and he was anxious to cancel his contract. The matter was brought before the courts. Not only was the case decided against him, but he was even ordered to pay damages to the institute for having extracted two teeth without its authorization, which was held to be, in point of law, a breach of contract.

A Matter of Punctuation.—In *People ex rel. Krulish v. Fornes*, 175 N. Y. 114, 67 N. E. 216, O'Brien J., says: "A change in punctuation is frequently as material and significant as a change in

words. It is related of an eminent member of the British House of Commons, that once in the heat of debate he called one of his fellow members a scoundrel. This was held unparliamentary language, and the speaker, or perhaps the House, ruled that the offending member must apologize, and the latter submitted to the decision, and tendered the apology in these words, without punctuation: 'I called the honorable gentleman a scoundrel it is true and I am sorry for it.' It is plain that this sentence might convey either one of two meanings, one utterly the reverse of the other, depending entirely upon the punctuation. Punctuated in one way it would mean this: 'It is true that I called the honorable gentleman a scoundrel, and I am sorry that I did.' Punctuated in another way it would mean this: 'I called the honorable gentleman a scoundrel, it is true that he is a scoundrel, and I am sorry that he is one.' The meaning first mentioned was the one which the House evidently adopted. The last one would only add insult to injury, and would be a gross contempt of the House."

The Higher Law.—In a certain county in Florida the criminal docket of the circuit court, opposite the name of a party charged with murder, contains the following entry: "Defendant hung March 10th, 1910. This case stands transferred to the Court of Heaven."

This is grim humor; but as a pointed recognition of a great truth, it is not without value. It impresses upon us the fact that while religion and morality embrace both time and eternity in their mighty grasp, human laws reach not beyond the boundaries of time. Jurisprudence regards men only as members of civil society. It assists to conduct them from the cradle to the grave, as social beings, and there it leaves them to their final judge.

This entry recalls the thrilling words of the patriot Jacob Milborne, executed in New York in 1691, on a charge of treason of which he was subsequently declared innocent by the British Parliament. He cried from the scaffold to one of his persecutors: "Robert Livingston, I will plead thee at the bar of Heaven for this deed."



Judges and Lawyers

A contemporary record of notable men



John W. Daniel

Jurist and Statesman

The death of Senator John Warwick Daniel removes the oldest of the Democratic Senators in point of service. Of the entire list, he was the only one who could be said to belong to the old régime. And as he was the oldest in service, he was one of the most conspicuous in popular favor.

For the past few years he had remained in the background. His health had not been good, and he was not heard often in the Senate. But previous to this period he spoke frequently, and enjoyed a high reputation as an orator. In those earlier days his speeches were the signal for the gathering of large audiences, and by many as an orator he was ranked with Voorhees, Ingalls, Wolcott, and Vest.

A man of extensive reading, liberal education, and retentive memory, he commanded a voluminous vocabulary. He spoke fluently and with ease, and seemed never at a loss for something pertinent to say. He was a strong advocate of free silver coinage, and took a prominent part in the debates connected with the silver legislation of the nineties.

Entering the Confederate Army as sec-

ond lieutenant in the Eleventh Virginia Infantry of the "Stonewall Brigade," in May, 1861, he was wounded in the first battle of Manassas. After becoming adjutant of his regiment, Lieutenant Daniel was wounded at Boonsboro, Maryland; then he was promoted to be major and chief of staff of General Jubal A. Early, participating in the battles of Fredericksburg, Winchester, Gettysburg, Rappahannock Bridge, and Mine Run. In the battle of the Wilderness, on May 6, 1864, Major Daniel was struck by a rifle bullet, and so seriously crippled that he had to walk with crutches for the remainder of his life.

He was the author of "Daniel on Attachments" and "Daniel on Negotiable Instruments," two books which are classed as authorities.

In connection with the latter book the following story is told: He was lecturing on law at the Washington and Lee University, when a student arose and said: "I beg your pardon, Mr. Daniel, but may I ask a question?"

"Certainly."

"Well, sir, I would like to know how



Photo By Charles Parker, Washington, D. C.

JOHN W. DANIEL

many days of grace are allowed in this state?"

"Really," said Daniel, "I cannot recall at this moment, but if you will refer to my work on Negotiable Instruments you will ascertain. Now, young gentlemen, as I was saying—"

An interesting indication of his character was shown when he assumed personal debts of his father amounting to \$100,000, for which there was no moral claim upon the son. He felt it his duty, however, to discharge them, and on his sixty-fifth birthday had the distinct pleasure of making the last payment.

For no personal trait was Senator Daniel more noteworthy than that of urbanity. Whether in private life or in his intercourse with his senatorial colleagues, his courtesy was unfailing. Even in the heat of debate, and often under provoking circumstances, he never failed to submit to interruptions, and to make polite response to inquiries and objections. His treatment of his friends was worthy of the best days of the Old Dominion.

Honorable Samuel Douglas McEnery, a Senator of the United States for the state of Louisiana, passed out of earthly life, at his home in New Orleans, on Tuesday, June 28. The Senator had reached home on Monday morning, having left Washington on Saturday night, immediately after the adjournment of Congress.

Twice governor of his state, subsequently a judge on its supreme bench,—a position which he resigned to accept a seat in the United States Senate, to which he was re-elected, and to which he would have continued to succeed had he lived longer,—it is not too much to say that there was in the state no public man more generally beloved than this noble old citizen.

He was a man of quiet disposition and habits, and delivered very few speeches in the Senate. Although in general a staunch Democrat, Senator McEnery frequently voted with the Republicans on tariff questions. He never missed a session of the Senate, and was a great stickler for its dignity and its time-worn traditions.

Mississippi's Attorney General



HON. S. S. HUDSON

Honorable S. S. Hudson, of Vicksburg, Mississippi, was appointed Attorney General of the state by Governor Noel, on April 11th, 1910. Soon afterwards it became his duty to give an opinion as to the legality of the proposed Percy-Vardaman senatorial primary election, as asked for by them, and indorsed by joint resolution of the legislature.

After quoting section 3722 of the Code, which provides how primary elections for the nomination of United States Senators are to be held,—which is in effect that such primary can only be held during the year next preceding the assembling of the legislature that is to elect a Senator,—the Attorney General observed: "This is the law, and the state executive committee has no power to controvert its plain mandates; and its enactment is too obviously sensible for discussion. Evidently, the sense of the state was to have the United States Senator voted for at the same primary at which the legislature is to be elected; so when he, as the people's representative, voted for United States Senator, his will and vote would be controlled by and reflect the will of the people."

Quoting the statutes further, the Attorney General remarked: "Section 3721 of the Code of 1906 provides: 'The election of any party nominee, who shall be nominated otherwise than is herein provided, shall be void, and he shall not be entitled to hold the office to which he may have been elected. No political party shall be entitled to recognition as such unless it has made its nominations as herein provided.'

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"Under this statute, should the election be held as contemplated in the concurrent resolution, it would be voluntary, without authority and sanctity of law, and without the official assistance of the primary election officers and machinery, and would therefore be conducted by unofficial or gratuitous help provided by the contending candidates to perform their various duties in the various precincts of the state, with no power to obtain and use the poll boxes, and without the legal power to get them, and with no power to command the constituted authorities to restrain and correct crimes, wrongs, and frauds, if any, perpetrated at the election."

Concluding, General Hudson said: "Doubtless Governor Vardaman and Senator Percy both prefer an early adjustment of the matter, but they and the desires of all other aspirants should be subservient and in obedience to the law, and to uphold its mandates, rather than set a precedent that would crush its beneficent effects."

General Hudson commenced the practice of law in Yazoo City, Mississippi, in 1890. The same year he was elected to the legislature from Yazoo county. In 1892 he resigned his seat in the legislature, and was elected, over four opponents, as district attorney of Jackson district, perhaps the most important district in the state. When his term expired, he moved to Vicksburg, Mississippi, and re-entered the private practice of the law, with one of the strongest bars of the state, and has to-day a large and lucrative law practice.

He has held under the different governors many appointments as special judge.

George L. Paxton, attorney of Red River, Taos county, New Mexico, died at Washington the day that the House concurred in the Senate statehood bill, for the signing of which Paxton furnished an eagle's quill from his home county, embellished with gold from the Red River mines.

California's Attorney General

On June 14th, 1910, Honorable J. N. Gillett, Governor of California, addressed a letter to Attorney General Webb, in which he referred to the fact that while "sparring exhibitions," under certain



ULYSSES S. WEBB

conditions and restrictions, were permissible under the laws of the state, prize fights constituted a felony. The Governor continued: "It is claimed by many that the contest soon to take place between Jeffries and Johnson is to be a prize fight, as that term is understood in the law, and therefore a crime under our statutes."

"If this is true, it should be prevented; but if carried out, the guilty parties should be punished by law."

"I believe that you should investigate the matter, and take such legal steps as may be proper in your judgment, if warranted by the facts, in pressing the case to the court for its decision, and ask to have all interested parties enjoined pending the hearing. . . . If "sparring exhibitions," as permitted by our laws, means that fights where men are killed, beaten into insensibility, and their faces "cut to ribbons," are lawful acts, then it is time that the legislature should interfere and make such exhibitions or contests a felony."

On receipt of this communication, Attorney General Webb promptly pledged himself to stop the contest. He said: "The letter of the Governor is a positive and peremptory command, addressed to this office, to prevent the Jeffries-Johnson fight. The Governor states that the facts, as presented to him, show that the fight, if held, will be a prize fight, and that prize fights are prohibited by the laws of this state. This command the Governor has the right and power to

make, and it is the duty of this office to comply with it. I shall take such action as the law warrants to prevent the fight being held. It is the right of the office of the Governor to command; it is the duty of this office to obey. His instructions will be followed to the letter."

"The fact of the matter is," said the Attorney General, "that if this contest is one in which the contestants enter the ring with the avowed intention of knocking each other out, to use a fighting term, it is a prize fight and against the law. If they do not contemplate knocking each other out, I apprehend it is a 'fake,' and ought to be stopped."

This attitude on the part of the officers of the state drove the prize fight beyond its borders.

Ulysses S. Webb, was born at Flemington, West Virginia, September 29, 1864. In 1870 he removed with his parents to Kansas, in which state he was educated. He came to California in June, 1888, and engaged in the practice of law in 1889 at Quincy, Plumas county. He was elected district attorney of that county in 1890, and re-elected in 1892, 1896, and 1900, but resigned as district attorney in September, 1902, and was appointed Attorney General by Governor Gage September 15, 1902, to take the place of Tiley L. Ford, resigned. He was elected to the same office for the regular term November 4, 1902, and re-elected November 6, 1906.

Edmund Baxter, general counsel for the Associated Railroads of the South, in matters relating to interstate commerce, died at his summer home near Nashville, Tennessee. He was in his seventy-second year, and was a recognized authority on railroad and corporation law in general.

He was formerly counsel for the Louisville & Nashville Railroad in Tennessee, and was for several years a member of the faculty of the Law School of Vanderbilt University. He had been in failing health for a year or more.

He was generally regarded as one of the foremost lawyers of the United States. When Mr. Justice Stanley Matthews was on the United States Supreme

Court bench, he said to a member of the Nashville bar one day, that he regarded Judge Baxter as one of the four or five really great lawyers that practised before that court, and that the Tennessean was not inferior in learning or ability to any of the other three.

He used to tell with great relish of his first appearance before the Supreme Court of the United States, when yet a comparatively young man. Not knowing the rule of that august court, that the lawyer making an argument before it must appear in a Prince Albert coat, he was not the possessor of such a garment when the time came for him to appear before the court for the first time. A distinguished lawyer from an eastern state saw his predicament, and quickly changed coats with him. Judge Baxter was short of stature, and the other lawyer was tall. In consequence the long coat struck Judge Baxter around his shoe tops. However, in spite of this handicap in appearance, he made his usual forceful argument, and won his case.

Judge Baxter was thoroughly prepared in every case that he ever tried. He was laborious in preparation, going into the most minute details, and laying his foundations deep and solid. No contingency could arise in a case for which he was not prepared. As an advocate without verbal pyrotechnics of any kind, he was an unusually forceful and eloquent speaker. He spoke the purest, most eloquent English, and with a logic that was irrefutable, he drove home his successive points as did few lawyers.

Sydney Webster, who in his day was considered one of the ablest lawyers in the United States, and one of the foremost authorities on international law, died from paralysis at his home, in Newport. He was in his eighty-third year.

When the Electoral Commission of 1877 was appointed in the Tilden controversy, Mr. Webster was one of the lawyers who prepared the Tilden case.

Mr. Webster was the author of "Two Treaties of Paris and the Supreme Court," in 1901, and of many monographs on topics of international and constitutional law.



The Humorous Side



A little nonsense now and then
Is relished by the best of men

Artless Pleading.—We have all heard “English as she is spoke.” Closely allied to this is “Pleading as she is sometimes plead.”

Strange as it may seem, there are lawyers so illy prepared for the practice of their profession, that the pleadings prepared and filed by them are a mere travesty of this important branch of the law, and calculated to reduce legal proceedings to the level of comic opera. We present herewith two curious petitions, copies of which were sent us:

Circuit Court

Plaintiff's Petition.

E—— E——

V. S.

Illinois, Central, Rail, Road, Company, Defendant.

The Plaintiff's states the defendant is a Corporation Doing business in this state authorized to sue and be sued by said corporate name Illinois, Central Rail Road Company, that it did by its agents and servants detective on or about Mar or Apr, 1903 Arrest or have arrested and imprisonment ther son E. P., who is only Eighteen Years of Age, Charging him with Larceny, Says the same was done without provocation or cause for the lone purpose to deter parties from doing the company A wrong, Says on account of same the minor E. P. has been slandered in the some of one Thousand Dollars And for the suffering in body and mind, on account of said imprisonment, Plaintiff therefore prays for a Judgement For one Thousand Dollars and all other Relief,

Circuit Court

R. N. C. Plaintiff,

V. S.)——.(Petition

Illinois, Central, Rail, Road, Co, Defendant,

The Plaintiff R. N. C., State that the Defendant Illinois Central, Rail, Road,

Company, is a Corporation Doing business in this state, authorized to sue and be sued by said Corporate Name Illinois Central Rail, Road, Co,

That on or about 24.th Day of Decce, 1902 said Company, by its agents and servants stoped and lay a train of cars across the main street in D, for 30 minits says this plaintiff, had important business on the opsite side of said st from wher he was, after a docktor. says and his only way to get to wher he was, was to cross over said train except to go a long distance, which he did not have time, says while said train was standing still he made a effort to cross over the train, and said defendant without warning started to runn said said train and in doing so jurked this Plaintiff, casing him to fall of the train, brakeing his arme, says he is cripeled for life not abel to labor on account of said act as complained of in his damage in the some of Six Thousan, Dollars, Plaintiff therefore prays for A Judgemente fo Six Thousan Dollars and all other Relief,

There's When.—Client. “Can a man's character be judged from his handwriting?”

Lawyer. “Yes, if his letters are read in court!”—London Opinion.

Never Mind About Shakspeare.—“You said you made a personal examination of the premises,” interrupted the rural magistrate. “What did you find?”

“Oh nothing of consequence,” answered the witness. “A ‘beggary account of empty boxes,’ as Shakspeare says.”

“Never mind what Mr. Shakspeare said,” rejoined the R. M. “He will be summoned to testify for himself, if he knows anything about the case.”—Chicago News.

An Unfriendly Act.—Two neighboring farmers became involved in a quarrel over a spring which started upon the land of one of them and flowed across the highway onto the land of the other. Finally the matter got into court. Both of the litigants had been very friendly with a certain physician, but since the quarrel one of them seemed to lose his friendship for the doctor. At last the doctor had an opportunity to meet this farmer, and asked him: "Why is it, Bill, that you are down on me? I don't know that I have done you any harm, or anything that should have changed your friendship for me. "What," exclaimed Bill, "You have not done me any harm? If you had let that fellow who lives across the road die two years ago when everybody had given him up, instead of curing him, I would not have this trouble now. Is that not enough to do to an honest farmer?"

Known by Its Fruits —Said a New Mexican attorney to his youthful apprentice: "John, what do you understand by a freehold estate?"

"A frijole state," answered John, "is one which raises a large number of beans."

Indissoluble Marriages.—A South Dakota J. P. is in the habit of ending his marriage ceremonies as follows: "*What this court has joined together let no other court put asunder.*"

New England English.—Complaint was made to a landed proprietor by one of his employees, that boys who were swimming in a pond were causing quite a nuisance. The owner of the property gave the man the privilege of putting up a sign, as he had asked permission to do. The notice read as follows:

"No Loffing of Swimming on Theas Grown—Order by——. If Caught Law Will be Forced."—Berkshire Courier.

The Conservation Movement.—There lately happened to be in the office of Allen Wood, the Indianapolis lawyer, two of his friends named Heywood and

Greenwood. A client who knew all the men present came in and asked facetiously: "Are you trying to form an association of all the varieties of your family?" "What!" exclaimed Wood, "haven't you heard of the national movement for the conservation of the Woods?"

Must Deliver the Goods.—A motion for a new trial was made before Judge R. B. Albertson, of Seattle, Washington, in the supreme court of King county, in an action upon an agreement calling for the delivery of thirty barrels of whisky, all but five of which had been destroyed. The court, after reviewing the testimony, became seemingly impatient, and, with a Mark Twain twinkle in his eye, concluded: "I am unalterably opposed to any man being obliged to pay for whisky until he gets it."

Strenuous Devotion to Principle.—A law-book dealer recently received an order from a country patron, who ordered a well-known book, and wrote this: "Will you please forward me a copy of the above-named book at once. Do not send one bound in sheep, because I am a vegetarian."

The Rolling Stock was Safe.—A lawyer wrote a letter to a railroad yard clerk, asking that employment be given a client, who had just served a thirty-day jail sentence for larceny. The yard clerk made this annotation on the letter: "He's a h—— of a thief, but we've hired him just the same, for he won't steal a train."

Much Governed.—"Why do you call up at this box, my man?"

"To learn what new laws have been passed since I went on duty," answered the policeman.

An Exhaustive Hypothesis.—"Well, I began my thirty-thousand-word hypothetical question today."

"Seems to me that will exhaust you. Who'll make the closing argument?"

"My son. He starts law school next week. He ought to be graduated by the time I finish."—Louisville Courier-Journal.

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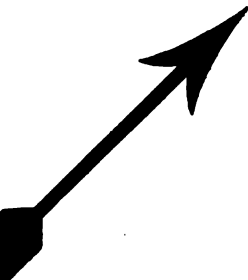
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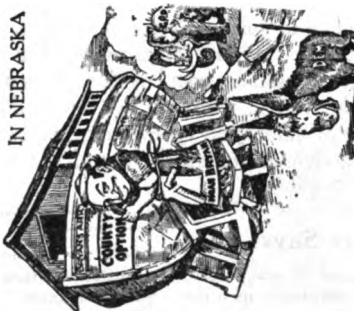
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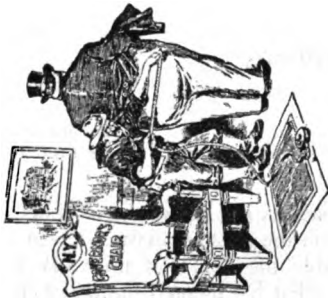
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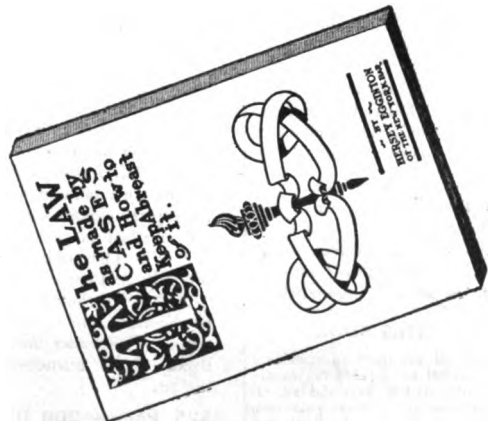
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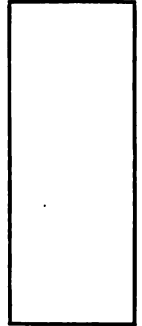
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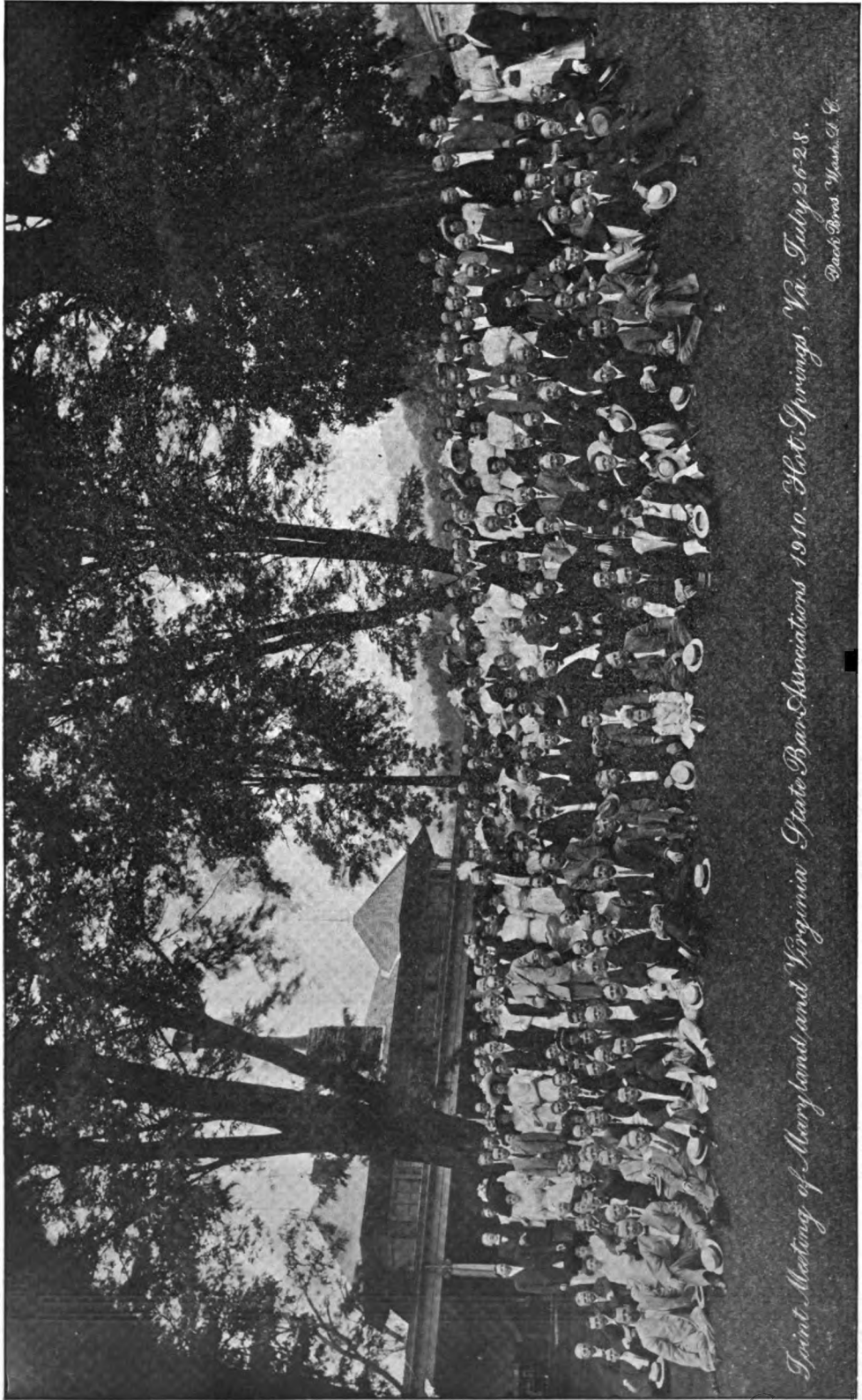
THE address of Justice Lurton, of the United States Supreme Court, was the feature of the morning joint session of the Virginia and Maryland Bar Associations. His theme was that the Supreme Court should simply exercise its judicial powers, and that no courts should assume legislative powers.

"Which shall it be?" he inquired, "A government of law, or a government of men? Is there not a growing disposition to disregard the limitations which we have placed upon those in authority, and a tendency to applaud the doing of things which we wish done, regardless of whether lawful or unlawful? If one in power does things which displease us, we are swift to inquire into his authority, but is that so if the things done meet with our approval?"

Great applause greeted his utterance that the law must be changed directly, not indirectly.

Justice Lurton declared that the great body of immigrants are unfamiliar with American constitutional ideas, and their ignorance of such ideas is the cause of much popular complaint against the courts and the law. He urged simple faith in the institutions of this government, and the maintenance of the independence of the legislative, judicial, and executive departments of the government.

Note:—A group portrait of those attending the meeting of the Virginia and Maryland Bar Associations appears on the reverse of this page. Justice Lurton may be seen sitting in the second row near the center of the picture.



*Joint Meeting of Maryland and Virginia State Bar Associations 1910. Hot Springs, Va. July 26-28.
Back Row Mark D. C.*



Justice Lurton in Second Row

Boycotts

Principles Applicable in Determining the Lawfulness of a Boycott by a Labor Union

BY ALMOND G. SHEPARD



ONE of the vexing questions growing out of industrial disputes, yet to be settled, is the right of members of labor organizations to bestow their patronage or beneficial intercourse, and the right to control or induce the acts of others in the bestowal of their patronage or beneficial intercourse, to the injury of those whom they denominate unfriendly to labor and with whom they are at the time engaged in an industrial dispute. In the solution of this question, many variant theories have been formulated, all to a greater or less degree based upon certain fundamental principles of law, which are also involved in much uncertainty and confusion. It is this latter fact which has occasioned, to a great extent at least, the conflict to be found in the decisions involving the lawfulness of the exercise by unions of different means to divert the trade, not only of their membership, but also of third persons, from those with whom they are engaged in an industrial dispute.

Unfortunately, in passing upon this question, some courts have formulated doctrines which would seem to have no application in matters of litigation other than industrial disputes. This has given rise to the claim upon the part of labor

unions and their friends that some courts are partial to the employer in disposing of questions relating to industrial disputes. It seems to be quite generally conceded that there is some ground for this claim, at least in some instances, and to an extent sufficient to have received recognition and notice in the platforms of the two great political parties, and to have been the subject of a bill in Congress relating to such controversies in the Federal courts, which has the approval of the President, who himself, when judge, was frequently called upon to determine many of the questions involved in litigation of this character, and whose utterances on the subject will hereafter be more particularly noticed.

Origin and Meaning of Term "Boycott."

In view of the foregoing conditions, it is a matter of considerable importance to determine whether the proper disposal of such questions requires the application of any principles of law other than such as would be properly applicable to substantially similar questions not involving industrial disputes.

The question raised, although broader than acts usually comprised within the term "boycott," is generally denominated by that term, and it will be so referred to herein. Indeed, the fact that the term "boycott" has been extended to cover substantially all cases involving attempts by labor unions to divert trade or patronage

from some person with whom they are having a controversy is one reason for the confusion which has arisen with reference to the general question as to the right of labor unions to divert trade or patronage.

As originally employed, the term "boycott" designated a controversy between Captain Boycott, a farmer of Lough Mark, in the wild and beautiful district of Connemara, and the tenants of a large landowner of that district for whom Boycott was agent. The controversy grew out of the service of notices on many of the tenants by Captain Boycott as agent. The tenants at once retaliated by a system

of persecution in the form of inaction, which they enforced by intimidation and violence little short of murder. The method pursued is thus described by Mr. Justice McCarthy in his work entitled "England under Gladstone." "The population of the region for miles round resolved not to have anything to do with him, and, as far as they could prevent it, not to allow anyone else to have anything to do with him. His life appeared to be in danger,—he had to claim police protection. His servants fled from him as servants flee from their masters in some plague-stricken Italian city. The awful sentence of excommunication could hardly have rendered him more helplessly alone for a time. No one would work for him; no one would supply him with food. He and his wife had to work in their own fields themselves, in most unpleasant imitation of Theocritan shepherds and shepherdesses, and play out their grim eclogue in their deserted fields with the shadows of the armed constabulary ever at their heels. The Orangemen of the north heard of Captain Boycott and his sufferings, and the way in which he was holding his ground, and they organized assistance, and sent him down armed laborers from Ulster. To prevent civil war, the authorities had to send a force of sol-

diers and police to Lough Mark, and Captain Boycott's harvests were brought in and his potatoes dug by the armed Ulster laborers, guarded always by the little army."

Thus, the term was originally employed to designate not only a policy of inaction, but an active interference with the common rights of another by preventing Captain Boycott from exercising his common right of holding business and social intercourse with others, by intimidating and coercing such persons as he might desire to deal with from having any business dealings with him. Not only was this boycott unlawful for the



reason mentioned, but for the further reason that the primary purpose or object was maliciously to injure and annoy Captain Boycott, and not for the direct purpose of benefiting those engaged therein. As thus employed, the term "boycott" designated acts which were unlawful *per se*, whether indulged in by a single individual or a collection of individuals. It may be observed that in designating a boycott unlawful *per se*, the courts since that time have apparently had reference to the term as thus employed, rather than to its wider scope.

Thus, President Taft, then judge, said that the essential feature of boycotting was the exclusion of the employer from all communication with former customers and materialmen by threats of similar exclusion of the latter if dealings were continued.¹

It was undoubtedly with this understanding of the term that this learned jurist and statesman, in a later case² remarked that "boycotts, though unaccompanied by violence or intimidation, have been pronounced unlawful in every state of the United States where the question has arisen, unless it be in Minnesota.

¹ *Moore v. Bricklayers' Union No. 1*, 23 Ohio L. J. 48.

² *Thomas v. Cincinnati, N. O. & T. P. R. Co.* 4 Inters. Com. Rep, 788, 62 Fed. 803.

They are held to be unlawful in England." This case involved the right of employees to refuse to handle the cars of another company for the purpose of coercing their employer to break off business relations with such company, without thereby expecting to obtain any direct advantage to themselves, but primarily for the purpose of injuring such company.

Cases involving such a state of facts do not present as serious a question as does the question of the right of a labor organization to divert the trade of its members and others from one with whom they are having a controversy, although there is a considerable conflict among the courts as to the right of labor organizations to direct their members to refuse to handle the product of one with whom they are at war industrially.³

Doctrine of Conspiracy.

The general question as to the right to divert trade is not so easily disposed of. Some courts, apparently influenced in part at least by the foregoing cases, and in part by the application of a generally disapproved and obsolete principle that an act, though lawful if done by a single individual, is rendered unlawful if done by a collection of individuals, have asserted that attempts by labor organizations to divert the patronage of their membership and third persons from a person with whom they were having an industrial controversy, are unlawful, although no intimidation or coercion is resorted to, other than the mere fact of numbers, and even though the primary object sought was lawful and the means employed, if done by one, lawful.⁴

The reasoning of these cases is to the effect that, although it may be lawful for a single individual to bestow his patronage as he chooses, and to induce or per-

suade others to bestow their patronage in accordance with his ideas, yet such action by a number of individuals, although the object sought be a lawful one, is unlawful because of the mere fact of the number engaged therein,—that of itself amounting to unlawful coercion and intimidation; and such an attempt is denominated a conspiracy and enjoined in equity on that ground.

This reasoning is a departure from the well-settled rules relating to torts and conspiracies, and will not stand the test applicable thereto.

As Affected by Lawfulness of Organization.

In the first place, it must be conceded that a labor organization organized for the purpose of obtaining better wages, shorter hours, and otherwise enhancing or benefiting the condition of the members, is a lawful organization. In a late case⁵ the contention was made that the purpose and effect of labor organizations was subversive alike of the fundamental rights of the employer to manage his own business and of the employees to bestow their labor as they might elect. Answering this contention the court said: "This kind of argument enters deeply into the domain of political science, and might well be addressed to a body of constructive statesmen, or men originally contemplating a labor organization; it is an argument that would be pertinent against the organization of society into government. The will of the individual must consent to yield to the will of the majority, or no organization, either of society into government, capital into combination, or labor into coalition, can ever be effected. The individual must yield in order that the many may receive a greater benefit. The right of labor to organize for lawful purposes, and by organic agreement to subject individual members to rules, regulations, and conduct prescribed by the majority, is no longer an open question in the jurisprudence of this country."

And in a well-considered English case⁶ Lord Herschell remarked that it was not for their Lordships to express any opin-

³ Note in 12 L.R.A. (N.S.) 642.

⁴ *Oxley Stave Co. v. Coopers' International Union*, 72 Fed. 695; *Loewe v. California State Federation of Labor*, 139 Fed. 71; *Rockey Mountain Bell Teleph. Co. v. Montana Federation of Labor*, 156 Fed. 809; *Martin v. McFall*, 65 N. J. Eq. 91, 55 Atl. 465; *George Jonas Glass Co. v. Glass Bottle Blowers' Asso.* 72 N. J. Eq. 653, 66 Atl. 953; *American Federation of Labor v. The Bucks Stove and Range Company*, 37 Washington Law Rep. 154 (161, 162).

⁵ *Wabash R. Co. v. Hannahan*, 121 Fed. 563.

⁶ *Allen v. Flood* [1898] A. C. 129, 17 Eng. Rul. Cas. 285.

ion on the policy of trade unions, membership of which may undoubtedly influence the action of those who have joined them, and added: "They are now recognized by law; there are combinations of employers as well as of employed. The members of these unions, of whichever class they are composed, act in the interest of their class. If they resort to unlawful acts, they may be indicted or sued. If they do not resort to unlawful acts, they are entitled to further their interests in the manner which seems to them best and most likely to be effectual."

Concert of Action When Act Otherwise Lawful.

It would seem clear that there is nothing in labor unions themselves which could be said to amount to a conspiracy as that term is generally understood. At common law, a conspiracy was a combination of persons combined to commit a felony. As thus used, it could have no possible application to the question. At the present time, a conspiracy is generally defined to be a confederation to do something unlawful either as a means or an end.⁷ Before the courts may punish or prevent a conspiracy, either the act conspired or the manner of its doing must be unlawful.⁸ A conspiracy cannot be made the subject of a civil action, unless something is done which without the conspiracy would give a right of action.⁹

As it is a general rule grounded in the fundamental principles, that an act which, if done by one alone, would constitute no cause for action in tort, cannot be made the ground of such an action or the basis for relief by alleging it to be done by or through a conspiracy of several. The quality of the act and the nature of the injury inflicted must determine the question.¹⁰

⁷ State v. Bacon, 27 R. I. 252, 61 Atl. 653.

⁸ Jetton-Dekle Lumber Co. v. Mather, 53 Fla. 969, 43 So. 590.

⁹ Cooley, Torts, 3rd ed. 210; Bowen v. Matheson, 14 Allen, 499; Robertson v. Parks, 76 Md. 118, 24 Atl. 411; Brackett v. Griswold, 112 N. Y. 454, 20 N. E. 376; Martens v. Reilly, 109 Wis. 464, 84 N. W. 840; Huttley v. Simmons [1898] 1 Q. B. 181, following Kearney v. Lloyd, Ir. L. R. 26 Eq. 268.

¹⁰ Kimball v. Harman, 34 Md. 407, 6 Am. Rep. 340; Hutchins v. Hutchins, 7 Hill. 104; Adler v. Fenton, 24 How. 407, 16 L. ed. 696; Wellington v. Small, 3 Cush. 145, 50 Am. Dec. 719; Cotterell v. Jones, 11 C. B. 713.

The cases which apply the doctrine that an act lawful if done by one becomes unlawful if done by many, because the mere fact of numbers constitutes unlawful intimidation or coercion, or because the injury inflicted is greater, and hence is a conspiracy, not only assert a doctrine that will not stand comparison with the general doctrine of conspiracy, but assert a test that is illogical as well. In substance, it amounts to an assertion that concerted action is illegal because it is concerted action, thus completely ignoring the well-settled doctrine that the foundation of every action of tort, apart from the question of malice, is an act wrongful and which may be qualified legally as an injury. "It is essential in tort that the act complained of be legally wrongful as regards the party complaining; that is, it must prejudicially affect him in some legal right; merely that it will, however directly, do him harm in his interests is not sufficient."¹¹

The only English support for the doctrine that mere concert of action may make an otherwise lawful act unlawful is the famous case of the *Tubwomen v. The Brewers of London*, an apparently mythical case, wherein the rule was supposed to have been declared that it was unlawful for the tubwomen of London to have resorted to concerted action to secure better wages. No such case is reported, and the only case that could reasonably be said to be referred to is that of *Attorney v. Starling*,¹² which, however, does not sustain the rule as thus broadly stated.

The general theory of conspiracy as an element in determining the lawfulness of an attempt by a labor organization to divert trade, based upon the theory that such attempt by the concerted action of a number of individuals constitutes a conspiracy, although the act would be lawful if done by one, does not receive the support of the weight of authority of this country, and is disapproved by the English decisions. In this connection, and before taking up the cases that disapprove of this doctrine, it may be of benefit to remember that an individual has the undoubted right to bestow his patronage

¹¹ Rogers v. Rajendro Dutt, 13 Moore P. C. C. 209.

¹² 1 Keble, 650.

upon whomsoever he pleases. This may be said to be a positive right which he may exercise without being called to account for his motive or reason in bestowing his patronage upon one individual and refraining from patronizing another. In addition to this positive right, he has the common right to enjoy the benefits of his occupation, trade, or business without unlawful interference from others. He has a right to resort to lawful means to better his condition, and to that end, if he is a laborer, he has a right to buy the products produced by his employer and refuse to buy the product of some one whom he deems to be unfriendly to his interests. If he has this right as an individual, there is no lawful reason why he cannot exercise this right in concert with others equally interested with him, unless the doctrine of conspiracy as already considered be applied. If he is engaged in an industrial dispute with his employer, he has the undoubted right to refrain from bestowing any of his patronage upon such employer. And, in order to bring to a successful end such controversy, he has the common right of interfering with his employer's business to the extent of inducing others to refrain from patronizing such employer, providing he does not attempt actual coercion and intimidation other than appeals and moral suasion. This, however, is a common or qualified right, and, as will be hereafter shown, is unlawful if the primary purpose is to maliciously injure the business of his employer rather than to aid himself.

Test of Legality of Concerted Action.

In determining the question of the lawfulness of the exercise of these rights by a collection or combination of individuals acting in concert, the same test should be applied as is applicable in determining the exercise of the same right by an individual.

And it may be said that the weight of authority in this country, and the settled rule of England, is to apply these principles in determining the lawfulness of the exercise of the same right by a labor union. As applied to a combination of traders, it has been held that what one trader may do in respect of competition, a body or set of traders can lawfully do.

In a leading English case involving this question¹³ Lord Morris so declared the rule, and asserted that "a body of traders whose motive object is to promote their own trade can combine to acquire and thereby in so far to injure the trade of competitors, provided they do no more than is incident to such motive object and use no unlawful means."

The latest utterance of the English court upon this question is that of *Big-ham, J.*¹⁴ who remarked that "an actionable conspiracy exists when a number of men combine either to do an unlawful act or to do a lawful act by unlawful means. I have already said that, in my opinion, the acts of the individual defendants were not unlawful and there is good authority for saying that a combination entered into for the mere purpose of doing a lawful act cannot constitute an actionable conspiracy. In order to give a cause of action, the combination to do the lawful act must be entered into with a malicious intention of damaging the plaintiff, and must cause him damage. Here no such conspiracy ever in fact existed, for there never was any malicious intention."

This is also the doctrine of the majority of the American courts. In one of the leading cases on the subject¹⁵ the court said: "To maintain a bill on the ground of conspiracy, it is necessary that it should appear that the object relied on as the basis of the conspiracy, or the means used in accomplishing it, were unlawful. What a person may lawfully do, a number of persons may unite with him in doing, without rendering themselves liable to the charge of conspiracy."

In another leading case on the subject¹⁶ Mr. Justice Parker, speaking for the majority of the court, declared the rule to be that "whatever one man may do alone, he may do in combination with others, provided they have no unlawful

¹³ *Mogul S. S. Co. v. McGregor* [1892] A. C. 25.

¹⁴ *Glamorgan Coal Co. v. South Wales Miners' Federation* [1903] 1 K. B. 136.

¹⁵ *Macauley Bros. v. Tierney*, 19 R. I. 255, 61 Am. St. Rep. 770, 33 Atl. 1, 37 L.R.A. 455.

¹⁶ *National Protective Asso. v. Cumming*, 170 N. Y. 315, 88 Am. St. Rep. 648, 63 N. E. 369, 58 L.R.A. 135.

object in view. Mere numbers do not ordinarily affect the quality of the act."

Upon the same question in a later case¹⁷ it was said: "It is not in the breast of the court to stamp as illegal a combination for the betterment of the interests of the members thereof, or of some of them, and which, without incidental violence or intimidation, severs all business dealings with an outsider until it may secure it. If this be illegal, where can we draw the line so as to countenance association to insure united, and, therefore effective, action to right what seems wrong, or to correct what seems an abuse, or to mark disapproval of some policy in the everyday affairs of our social life? The protest of one under threat of abstention may be unheeded in view of the slightness of the penalty, when a like protest of many, with similar threat, is effective, and only because the penalty is too great to pay. . . . It may be that the result of the boycott is a loss to him proscribed. Else, the combination would fail of its purpose. But, when the result sought by a boycott is to protect the members of the combination, or to enhance their welfare, that loss is but the incident of the act, the means whereby the ultimate end is gained."

On the same subject in a late decision by the supreme court of Montana¹⁸ it is said: "There can be found running through our legal literature many remarkable statements that an act perfectly lawful when done by one person becomes, by some sort of legerdemain, criminal when done by two or more persons acting in concert, and this upon the theory that the concerted action amounts to a conspiracy. But with this doctrine we do not agree. If an individual is clothed with a right when acting alone, he does not lose such right merely by acting with others, each of whom is clothed with the same right. If the act done is lawful, the combination of several persons to commit it does not render it unlawful. In

other words, the mere combination of action is not an element which gives character to the act. It is the illegality of the purpose to be accomplished, or the illegal means used in furtherance of the purpose, which makes the act illegal."¹⁹

Mr. Justice Holmes in a very able dissenting opinion²⁰ on the same point remarked: "But there is a notion, which latterly has been insisted on a good deal, that a combination of persons to do what any one of them lawfully might do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition. But, in the general form in which it has been presented and accepted by many courts, I think it plainly untrue, both on authority and on principle."

The Illinois appellate court²¹ also declared the rule to be that "a person, with or without reason, may refuse to trade with another; so may ten or fifty persons refuse. An individual may advise his neighbor or friend not to trade with another neighbor. He may even command when the language amounts only to earnest advice."

This seems also to be the well established rule in other jurisdictions.²²

As Affected by Nature of Act, Whether Exercise of Positive, or Common, or Qualified Right.

Under this doctrine, the lawfulness of a diversion of trade by labor organizations being determined by the application of principles similar to those applied to other classes of cases involving the exercise of what may be termed a common or qualified right, as distinguished from a positive right, it will not be amiss briefly to review the law relative to the exercise

¹⁹ And see note in 16 L.R.A.(N.S.) 85.

²⁰ *Vegeahn v. Guntner*, 167 Mass. 92, 57 Am. St. Rep. 443, 44 N. E. 1077, 35 L.R.A. 722.

²¹ *Ulery v. Chicago Live Stock Exchange*, 54 Ill. App. 233.

²² *J. F. Parkinson Co. v. Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, 21 L.R.A. (N.S.) 550; *Clemmitt v. Watson*, 14 Ind. App. 38, 42 N. E. 367; *Marx & H. Jeans Clothing Co. v. Watson*, 168 Mo. 133, 90 Am. St. Rep. 440, 67 S. W. 391, 56 L.R.A. 951; *Klingel's Pharmacy v. Sharp*, 104 Md. 218, 118 Am. St. Rep. 399, 64 Atl. 1029, 9 A. & E. Anno. Cas. 1184, 7 L.R.A.(N.S.) 976.

¹⁷ *Straus v. American Publishers' Assn.* 177 N. Y. 491, 101 Am. St. Rep. 819, 69 N. E. 1107, 64 L.R.A. 701; *Mills v. United States Printing Co.* 99 App. Div. 605, 91 N. Y. Supp. 185, citing the *Cumming Case*.

¹⁸ *Lindsay & Co. v. Montana Federation of Labor*, 37 Mont. 264, 127 Am. St. Rep. 722, 96 Pac. 127, 18 L.R.A.(N.S.) 707.

of such rights by individuals. In the first place, it should be remembered that a positive right is the right of every individual to the exercise of the rights incident to the ownership of property and rights growing out of contractual relations, the general rule being that he cannot be called to account for any injury occasioned to others by the exercise of such rights without reference to his motive. There is, however, the right of every individual to pursue his labor, occupation, trade, profession, or business in common with others. This may be termed a common or qualified right. In the exercise of this right the individual cannot be held liable for injuries occasioned competitors by reason of any lawful means resorted to by him for the primary purpose of benefiting himself, such injuries not being a legal injury. He cannot, however, exercise this right, not for the primary purpose of benefiting himself, but for the malicious purpose of injuring another, and for injury so inflicted an action will lie.²³

This doctrine may be illustrated by its application to malicious acts of individuals interfering with the property or business of another. Thus, an individual has been held liable for damages for maliciously firing on his own grounds near another's decoy for wild ducks, for the purpose of scaring away the ducks;²⁴ and for maliciously frightening rooks away from another's rookery;²⁵ also for maliciously preventing children from attending a private school, by violence and intimidation;²⁶ for maliciously firing a cannon at negroes to frighten them and thereby prevent them from trading with a competing trading ship;²⁷ and for maliciously setting up a competing barber shop for the purpose of drawing away another's customers;²⁸ also for maliciously driving away another's customers by threatening to sue them for infringement of patent;²⁹ and maliciously driving away another's customers by falsely misrepresenting his solvency;³⁰ for driving another's customers away by maliciously threatening to discharge them or procure their discharge;³¹ and the malicious refusal by a theater company to book attraction of any company dealing with a competitor.³² Such malicious acts, when

done by the concerted action of many for the primary purpose of injuring another, rather than benefiting themselves, amount to a conspiracy.³³

Malice is the Mere Test.

The foregoing authorities make it clear that a labor organization may become liable the same as an individual for any interference with the trade, occupation, or business of another, even though such interference is not accompanied with intimidation, coercion, or violence, if the primary object sought is the injury or destruction of such trade, occupation, or business, rather than to benefit the membership. But where violence, intimidation, or coercion other than such as may arise from the mere force of numbers is not resorted to, a labor organization is not liable for attempts by means of appeal, persuasion, etc., to divert the trade from one with whom they are having an

²³ Walker v. Cronin, 107 Mass. 555; Moores v. Bricklayers' Union No. 1, 23 Ohio L. J. 48; Mogul S. S. Co. v. McGregor [1892] 2 A. C. 47; dissenting opinion of Lord Penzance in Capital & C. Bank v. Henty, L. R. 7 App. Cas. 741; Tuttle v. Buck, 107 Minn. 145, 119 N. W. 946, 22 L.R.A. (N.S.) 599.

²⁴ Keeble v. Hickeringill, 11 East, 574, note.

²⁵ Hannam v. Mackett, 2 Barn. & C. 934.

²⁶ 11 Hen. IV.

²⁷ Tarleton v. M'Gawley, 1 Peake, N. P. 205.

²⁸ Tuttle v. Buck, supra.

²⁹ Stroud v. Smith, 194 Pa. 502, 45 Atl. 329.

³⁰ Brown v. American Freehold Land Mortg. Co. 97 Tex. 599, 80 S. W. 985, 67 L.R.A. 195.

³¹ Graham v. St. Charles Street R. Co. 47 La. Ann. 1656, 49 Am. St. Rep. 436, 18 So. 707.

³² Opinion of Spring J., in Roseneau v. Empire Circuit Co. 131 App. Div. 429, 115 N. Y. Supp. 511.

³³ Boutwell v. Marr, 71 Vt. 1, 76 Am. St. Rep. 746, 42 Atl. 607, 43 L.R.A. 803; West Virginia Transp. Co. v. Standard Oil Co. 50 W. Va. 611, 58 Am. St. Rep. 895, 40 S. E. 591, 56 L.R.A. 804; Ertz v. Produce Exchange, 79 Minn. 140, 79 Am. St. Rep. 433, 81 N. W. 737, 48 L.R.A. 90; Hawarden v. Youghiogheny & L. Coal Co. 111 Wis. 545, 87 N. W. 472, 55 L.R.A. 828; Jackson v. Stanfield, 137 Ind. 592, 36 N. E. 345, 37 N. E. 14, 23 L.R.A. 588; Cleland v. Anderson, 66 Neb. 252, 92 N. W. 306, 96 N. W. 212, 98 N. W. 1075, 105 N. W. 1092, 5 L.R.A. (N.S.) 136; Temperton v. Russell [1893] 1 Q. B. 715; Klingel's Pharmacy v. Sharp, 104 Md. 218, 118 Am. St. Rep. 399, 64 Atl. 1029, 9 A. & E. Ann. Cas. 1184, 7 L.R.A. (N.S.) 976.

industrial controversy, where the primary object is to benefit themselves; the purpose being, not to destroy the business of the employer, but to divert the business to other employers who are employing members of the organization. And the fact that the business of the employer is seriously injured or ruined as a result of the acts of the union is not of itself sufficient to render their conduct actionable, the rights of the employer in this respect being a common or qualified right,—that is, the right to be protected in his business from the malicious acts of others in the exercise of their common or qualified rights, but not from injuries occasioned from the exercise of such rights for a lawful purpose.

In this connection it may be said that, while the mere fact of numbers engaged in diverting trade does not render a lawful act unlawful, yet that fact may be considered in determining whether the attempt to divert trade is for the lawful purpose of benefiting those engaged therein or for the malicious and unlawful purpose of injuring the business of the employer. On the other hand, and as an offset to any inference that might arise from the numbers engaged in an alleged boycott, it should be remembered that laborers engaged in at least the same

character of labor, although for different employers and at different localities, are directly interested in a uniform scale of wages, hours of employment, etc., and hence are entitled by concerted action to refrain from purchasing the product of any employer not complying with such regulations. To a less degree, all laborers are likewise interested in the general maintenance of uniform wages, hours of labor, and other regulations. So, also, is the public at large interested therein, and are entitled to be informed relative to the merits of any controversy between employer and employee. And if the result of such information is the withholding of patronage from such employer, his injury is not a legal injury giving him any right of action for the damages so occasioned. As stated in a recent case:⁸⁴ "One may refuse to deal with a firm because of a belief that it does not give honest compensation for labor, and may ask his friends or the public to do the same thing; . . . labor has a right to organize; . . . labor has the right to appeal to the community, and say, 'Don't patronize this man, because he does not sympathize with organized labor.'"

⁸⁴ *People v. Radt*, 15 N. Y. Crim. Rep. 174, 71 N. Y. Supp. 846.



Employers' Liability and Compensation Legislation

BY HON. CYRUS W. PHILLIPS

Member of the New York Assembly from Rochester and of
the Employers' Liability Commission, who introduced
in the Assembly the bills recommended
by the Commission.



THE AUTHOR



BY the enactment of the workmen's compensation act at the last session of the legislature, New York state has adopted the principle that industrial accidents not due to the wilful misconduct of the employee ought to be compensated, and the burden cast upon the industry, instead of being left, as at present, in most cases, upon the injured workman or his family. Most of the European countries have discarded the doctrine that workmen should be compensated for injuries only when there has been negligence on the part of the employer or his representatives, and have adopted in its place various systems of compensation. New York legislation consists of two statutes: One, amending the employers' liability act, and providing an optional scheme of compensation which comes into operation upon the filing with the county clerk of a consent signed by the employer and the consenting employees. The other statute provides a mandatory scheme of compensation for accidents occurring in certain specified dangerous employments.

Before discussing the compensation features of these statutes, it may be well to refer to the amendments to the liability law, as this law will have general application outside of the trades referred to as dangerous, except where the optional plan has been adopted by an employer and his workmen.

The clause in the employers' liability act which makes the employer liable for any defect in the condition of the ways, works, or machinery is broadened by including therein the word "plant." And where an employer enters into a contract with an independent contractor to do part of such employer's work, or a contractor enters into a contract with a subcontractor to do part of the work comprised in the contractor's contract, the employer becomes liable for injuries to the employees of the contractor or subcontractor if such injuries are caused by any defect in the condition of the ways, works, machinery, or plant, furnished by or belonging to the employer provided the defect arose or had not been discovered, or remedied through the negligence of the employer or of some person intrusted by him with the duty of seeing that they were in proper condition.

That portion of the liability act which declared an employer liable for the negligence of any person in his service intrusted with and exercising "superintendence, whose sole or principal duty is that of superintendence, or, in the absence of such superintendent, of any person acting as superintendent with the authority or consent of such employer," is amended so as to make the employer liable for the negligence of any person intrusted with "any superintendence, or by reason of the negligence of any person intrusted with authority to direct, control, or command any employee in the performance of the duty of such employee." The provision of the statute requiring an employee to serve upon the employer notice

of the accident is amended by declaring that the failure of the employer to serve a written demand for a further notice shall constitute a waiver of all defects that the notice may contain.

The original employers' liability act attempted to modify the assumption-of-risk rule by declaring that the question whether the employee understood, and assumed the risk of injury by his continuance at his work with knowledge of the risk of injury should be one of fact, but subject to the usual powers of the court, in a proper case, to set aside a verdict rendered contrary to the evidence. This provision is amended in the new act, by striking out the language used, and providing in place thereof that, in case of a personal injury "for which the employer would be liable but for the hitherto available defense of assumption of risk by the employee, the fact that the employee continued in the service of the employer, in the same place and course of employment, after the discovery by such employee, or after he had been informed of the danger of personal injury therefrom, shall not be, *as matter of fact or as matter of law*, an assumption of the risk of injury therefrom."

The burden of proving contributory negligence is shifted from the plaintiff to the defendant by a provision declaring that, "on the trial of any action brought by an employee or his personal representatives to recover damages for injuries arising out of and in the course of such employment, contributory negligence of the injured employee shall be a defense to be so pleaded and proved by the defendant."

The statutes authorizing compensation from the employer, without regard to the question of negligence, provide a schedule of compensation hereafter referred to and are optional in all occupations except the following, in which their requirements are made mandatory:

1. The erection or demolition of any bridge or building in which there is, or in which the plans and specifications require, iron or steel frame work.

2. The operation of elevators, elevating machines, or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying

of materials in connection with the erection or demolition of such bridge or building.

3. Work on scaffolds of any kind elevated 20 feet or more above the ground, water, or floor beneath in the erection, construction, painting, alteration, or repair of buildings, bridges, or structures.

4. Construction, operation, alteration, or repair of wires, cables, switchboards, or apparatus charged with electric currents.

5. All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite, or any other explosives, where the same are used as instrumentalities of the industry.

6. The operation on steam railroads of locomotives, engines, trains, motors, or cars propelled by gravity or steam, electricity or other mechanical power, or the construction or repair of steam railroad tracks and road-beds over which such locomotives, engines, trains, motors, or cars are operated.

7. The construction of tunnels and subways.

8. All work carried on under compressed air.

These occupations are declared by the statute as being "hereby determined to be especially dangerous, in which, from the nature, conditions, or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen."

An employee injured under such circumstances as to bring him within the provisions of the mandatory compensation act may, after the accident, either accept the compensation prescribed, or waive that and sue under the employers' liability act. He must, however, make his election, and, having commenced either proceeding, he waives his rights under the other.

Under the optional compensation plan, the employee, by consenting to the plan, waives all future rights under the liability act, and is limited to the compensation prescribed in the schedule, unless the accident is due to serious or wilful mis-

conduct of the employer; while the employer, by consenting to the plan, becomes bound to pay the compensation fixed, unless the injury is due to the serious and wilful misconduct of the employee. And the failure of the employer to make his weekly payments promptly renders him liable to an action on contract, in which the judgment, if one is recovered, shall be for a lump sum equal to the amount of the payments "then due and prospectively due under the plan."

The scale of compensation under both the optional and mandatory plan consists of four years' wages, not to exceed \$3,000, in case of death, and 50 per cent of the workman's average weekly earnings in case of total incapacity for a period not to exceed eight years, and 50 per cent of the difference between the average weekly earnings before the accident and the average weekly earnings after the accident during the continuance of partial disability not to exceed eight years.

Claims of attorneys for contingent interests in recoveries under the compensation features of the statutes are not to be enforceable liens upon the fund recovered, unless approved by a judge.

The settlement of disputes arising under the compensation provisions is to be determined either by agreement or by arbitration, as provided in the Code of Civil Procedure, or by an action at law, to recover as on a contract the weekly or death benefits, and the right to trial by jury is retained.

The laws are the result of an investigation carried on by a commission created under a law passed at the previous session of the legislature.

It is not claimed that they solve the problem involved, but they commit the state to a new policy and point the way to an ultimate solution.

The constitutionality of the mandatory provisions are, of course, open to question. It is contended that, to make an employer liable for an accident inherent in the nature of the work, and one which he and his servants could not have prevented, constitutes a taking of property without due process of law. On the other hand it is asserted that the state, in the exercise of its police power, can require an employer carrying on a hazardous occupation which is bound to destroy lives and limbs, to make some compensation for the inevitable result of the carrying on of such trade.

The constitutionality of the principle embodied in a mandatory compensation act has never been passed upon by the courts. The trend of public opinion is in favor of the adoption of such statutes. New York has declared in their favor and has made it possible for their constitutionality to be determined. Employers' associations, labor unions, civic societies, and publicists are working on the problem. That it will be ultimately solved, and along lines radically different from the present system, seems certain.



Compulsory Arbitration of Strikes and Lockouts^{*}

BY HONORABLE JOHN GIBBONS

Judge of Circuit Court of Cook County, Ill.



THIS is a government of law, not of force. The theory of our government is based upon the idea that its laws are in a measure self-executory, for each citizen is deemed a guardian of the state and conservator of the peace. There is but one law for the native-born and the stranger, the rich man and the poor. No man, however powerful, and no class of men, however numerous, can be above the law or beyond it. The law sanctions the largest liberty of the individual consistent with the safety of the state. There is no liberty without law. That which men call liberty outside the law means license, which is the twin fury of anarchy.

Necessity of Legislation.

The tyranny of capital must be extirpated, and the thralldom of trades unions abolished. This cannot be effected through strikes and lockouts, nor by increasing the army and navy. It cannot be accomplished by mandates and injunctions of courts, the issuance of which, perhaps, is beyond the scope of their authority. The only solution under existing circumstances is through legislation. This can be effected when our lawmakers comprehend and appreciate the gravity of the situation, and enact just and salutary laws to regulate the actions of men in every legitimate pursuit of life, and create tribunals with powers

adequate to the enforcement of such laws.

Then would we witness the passing of the lockout and the strike, with all the distress and disaster that characterize their pendency.

Until we reach that higher plane in the march of civilization where man's duty to God and to his fellow man will be the motive and measure of human effort, there can be no effective solution of the vexing problems which now confront us as a people, outside the law; and it is worse than criminal for our legislators to neglect the enactment of appropriate measures for the speedy adjustment, by the courts, of these contentions so seriously affecting the public peace and the stability of our institutions.

Compulsory Arbitration.

There seems to be a consensus of opinion among the wise and thoughtful of to-day that in arbitration—voluntary or compulsory—must be sought the settlement of these perplexing questions; and the former having so frequently and utterly failed to effect the required results, there exists imperative necessity for resorting to the latter.

Arbitration Tribunal and Procedure.

If arbitration is made compulsory and the decree of the arbitrators enforced, the manner of creating the tribunal clothed with jurisdiction to hear and determine the issues is of vital importance. There is no serious objection to be urged against the appointment by the governor of three



^{*}From the author's copyrighted work entitled "Tenure and Toil."

competent persons as a board of arbitration and conciliation, similar to the Massachusetts plan, one of them to be an employer of labor, one an employee connected with some labor organization, and the third to be appointed on the recommendation of the other two, should they unite in such recommendation within a specified time after their appointment, and in case they did not that he be appointed by the governor on his own motion. It should be the duty of this board, whenever any controversy not involving questions of a private contractual nature exists between an employer and his employees, if he employ twenty-five or more persons, to visit the locality, make careful inquiry into the cause, hear all persons interested, and, if the matter in dispute cannot be amicably and speedily adjusted, to take the testimony in writing of a limited number of witnesses, from which to make findings of fact. The findings of fact so made should be presented to a judge of the circuit court, or other court of general jurisdiction, who should render judgment thereon in legal form, such judgment to be binding upon all parties to the controversy, unless annulled or modified as herein suggested.

If either party considered the findings of fact unwarranted by the evidence, he should be privileged to petition the chief justice of the supreme court of the state to appoint three judges of the circuit or other court of general jurisdiction, not elected in the county wherein the controversy arose, to meet at a time and place to be designated by him, to examine the evidence anew, determine for themselves the questions of fact and law, and reverse, modify, or affirm the judgment in such manner as to them should appear just and equitable. The decision of the judges so named, or any two of them, should be final and conclusive, and binding upon the parties interested, under the particular issues involved, until such a time as it could be shown that new conditions have arisen which would authorize a modification of the decree.

Until after the announcement of such a decision, it should be unlawful for the leader of any combination of men, or of the men themselves, to order a strike, and any person offending should be ad-

judged guilty of misdemeanor, and subject to fine or imprisonment, or both, according to the circumstances; and it should also be made unlawful for any corporation or individual to order a lock-out, the penalty for so doing to be the payment of full wages to the men affected by such lockout, and in addition thereto the recovery of a certain sum named in action of debt for the use of the school fund, or for such other public use as may be designated. The decree of this tribunal ought to be an alternative one. The employer might pay the wages decreed to be just, or he might close his factory, but he would not be allowed to continue operations and employ cheaper labor. On the other hand, the laborer could take the established wages or quit the employment, but he could not, directly or indirectly, afterwards interfere with the business of his employer.

Enforcement of Decree.

It is claimed by many that the decree of a tribunal of this nature could not be enforced, and that the only object of such a law should merely be the creation of a forum which would ascertain the causes which give rise to threatened difficulties, and declare its conclusions, the efficacy of which would wholly depend upon whether or not the party adjudged to be in fault could sustain itself against a judicial finding that it was in the wrong. I was inclined to this view at one time, but after careful investigation and mature reflection I am convinced that the decree of such a tribunal ought to be and could be enforced in the manner customarily followed in the enforcement of other decrees.

Should it be urged that there are in this country individuals and corporations, some of whom employ as many as ten thousand operatives, persons and corporations whose wealth is counted by tens of millions, and that it would be impossible to enforce a decree compelling such corporations or individuals to operate their works and pay their employees the higher scale of wages fixed by the decree, unless they chose to do so, and that it would be impracticable to compel ten thousand men to go to work at lower wages fixed by the decree if they refused

to do so,—to all such objections I would answer that the state in its organized capacity, whose duty it is to enforce laws for the well being of the whole people, is greater than any man or set of men whoever they may be. To deny the power of the state to enforce such a decree is to assume that the magistrate no longer holds the sword of justice, and that the right to redress grievances and punish offenders is lodged in the hands of individuals. It is to assume and affirm that resentment is the sole motive for prosecuting offenders against the public peace, and to gratify passion is the chief end of punishing them. It is to assume and affirm that he who suffers a wrong is the only person who has the right to pursue the aggressor, and to exact or remit the punishment. In a word, it is to assume and to affirm that the labor organizations and the money barons of the twentieth century are above the law, possessing a right to engage in incessant and murderous private warfare against each other, like their prototypes of the middle ages waged when they set at defiance the mandates of kings, and listened unmoved to the anathemas of the Vatican—that, after all, our loudly vaunted civilization is but the shadow of the substance which was so dearly won, and which once we prized so well.

It is unnecessary here to refer to the minor details of the proposed system. These can be depended upon to find ready adjustment if the plan itself be accepted as practicable.

Arbitration the Hope of the Future.

Arbitration should enter as an important element into any system that may be adopted. It has the approval of time.

From the earliest ages it has opened the way to peace in controversies between men and nations. It is the hope of civilization in turning the sword into the ploughshare, and enmity into toleration and charity. Often has it averted war, many bitter quarrels has it transformed into amicable alliances. When selfishness rejects arbitration it invites violence. As the dispenser of peace and justice it should be welcomed into the settlement of contentions between capital and labor. Vitalized by the enactments necessary to give it a legal entity, it would soon become recognized as the one agency, benign and potential, for harmonizing and adjusting all the relations and differences between employer and employee.

Integrity of Our Courts.

The courts of the country have, even in the most venal period of the nation's history, remained pure and incorruptible, and our judges, whether dependent upon popular favor for the offices they held, or appointed by the executive, have had the courage to do right, and to decide great public questions in accordance with their convictions of justice, regardless of personal considerations. Hence it is that the great majority of the people, with reason, have every confidence in the integrity of the judiciary. From the days when St. Louis of France sat beneath the spreading tree in the courtyard of his palace to hear the appeals of his people, and to modify and revoke the judgments of the relentless barons of those times, the courts have always been the guardians of the rights and privileges of the poor, the unswerving friends of the oppressed.



The Use and Abuse of Injunctions in Labor Controversies

BY HONORABLE CHARLES E. LITTLEFIELD

of New York, formerly Representative in Congress from Maine.



IN the matter of the use and abuse of injunctions in labor controversies, so much is repeatedly and insistently said, and so vigorously have the courts been denounced, that I think it may be safely said that the impression generally prevails that there has been and still is more or less abuse of judicial discretion in controversies of that character. I am free to admit that, in a general way, I entertained that impression myself, until I made the investigation to which I shall now refer.

The assertions have hitherto been general and indefinite in character. It seemed to me that it was both wise and proper that the parties making these assertions and engaged in wholesale denunciations of the courts should be required to specify the instances of abuse, and call attention to the circumstances under which they claim judicial discretion has been abused, and the power of granting injunctions in labor controversies has been oppressively or improperly exercised.

With that in view, on the 5th of February, 1908, when Mr. T. C. Spelling, the attorney representing the American Federation of Labor, appeared before the Judiciary Committee of the House of Representatives of which I was then a member, to urge the enactment of the Pearre bill, I took occasion to ask Mr. Spelling if he would be kind enough to specify the cases of injunctions where abuses had occurred, and point out the circumstances connected therewith, also to give a list of cases where injunctions have been improperly issued. Mr. Spelling replied that there were a great many such cases, and that he would furnish the

required information or have it done. It is proper to remark that Mr. Spelling did not file a single one of "the great many cases" he claimed existed.

Mr. Gompers, who appeared before the committee, was also requested to put in all such injunctions, in full, involving abuses of the judicial power, with reference to the cases complained of. Mr. Gompers appeared on the 24th of February, 1908, and was requested to file everything he had in that line, but nothing was filed with the committee until about the 6th or 7th of May, when a mass of material, some of it relating to state injunctions, some of it having no connection with injunctions, some of it being injunction orders and opinions relating thereto, was filed. No criticism of any injunction, order, or decree was filed with this material, and, although I specifically requested the gentlemen representing this organization to file with the other *data* such criticism as they had to make of these injunctions or orders, they absolutely declined to file any criticism whatever.

The papers thus filed show only twenty-three decisions, orders, or complaints, beginning with an injunction issued December 19, 1893, by Judge Jenkins, in the case of the Farmers' Loan & T. Co. v. Northern P. R. Co. (4 Inters. Com. Rep. 744, note 60 Fed. 803, 25 L.R.A. 414, note) being the celebrated Jenkins Case, involving the Order of Railway Trainmen.

The abstract covers only the Federal cases, as the Judiciary Committee had no concern whatever with the action of the state courts, as they have no effect whatever on Federal legislation, and it was only proposed Federal legislation that the Committee considered. Of these twenty-three decisions, two are of the supreme court of the District of Columbia,—*Bender v. Union* (Jan. 10, 1908),

and the Bucks Stove & Range Co. v. American Federation of Labor (Dec. 17, 1907), 36 Wash. L. Rep. 822.

In the Bucks Stove & Range Case, notice of the motion for preliminary injunction was given two and one half months before the motion was heard. The motion was fully argued, and the judge held the case under advisement for a month, and then made the order for the preliminary injunction to issue, and filed an able and courageous opinion, giving his reasons therefor. The case was set down for a hearing about two months after this order, and on the motion to make the injunction permanent the defendants did not contest the decree, which was made final without argument or criticism. In this case the American Federation of Labor was represented by eminent counsel, Honorable Alton B. Parker appearing for the respondents; and it was probably under his advice that the matter was not contested further,—a very significant and approving commentary upon the propriety of the order for a preliminary injunction issued by Mr. Justice Gould.

In the Bender Case, after notice and full argument, the court declined to issue a preliminary injunction. The matter was then carried forward and heard on the pleadings and proofs, on motion for a permanent injunction, which motion the court granted. After full argument the court took the matter under advisement, and then ordered a final writ of injunction to issue. From this decree the respondents entered an appeal. This appeal has since been withdrawn. Such withdrawal operates as a confession by respondents that their case upon the facts was hopeless and unworthy of further contention. If these two cases are characteristic of the twenty-three, they are all above criticism.

Two of these cases (Boyer v. Western U. Teleg. Co. 124 Fed. 246. and Platt v. Philadelphia & R. R. Co. 65 Fed. 660) are denials of petitions for restraining orders by labor unions against employing corporations. These are certainly not instances of abuse of the exercise of judicial discretion in the granting of an injunction, but are rather complaints because the court refused to exercise its

discretion in the way desired by the union, and certainly constitute no argument for legislation restricting the power of the courts in that regard.

Another case, that of Grand Trunk R. Co. v. Gratiot Lodge (August 23, 1905), comprises merely a complaint and order to show cause, no restraining order appearing.

The remaining eighteen cases are injunction orders issued by the circuit courts of the United States from December 10, 1893 (the Jenkins Case, above referred to), down to and including the restraining order in the case of the Hitchman Coal & Coke Co. v. Mitchell (Cal.), November 27, 1907.

In fifteen of these eighteen cases *ex parte* restraining orders were issued, including two injunctions applied for by receivers (Ames v. Union P. R. Co., January 27, 1894, and Farmers' Loan & T. Co. v. Northern P. R. Co. 4 Inters. Com. Rep. 744, note, 60 Fed. 803, 25 L.R.A. 414, note).

Two of these fifteen restraining orders (Wabash R. Co. v. Hannahan, 121 Fed. 563, and the order issued on the original bill in Allis-Chalmers Co. v. Iron Moulders' Union No. 125, 150 Fed. 155) were dissolved and motion for preliminary injunction denied on the hearing on the merits of the case.

In Kemmerer v. Haggerty (139 Fed. 693), also one of these cases, the restraining order was vacated for lack of jurisdiction over the parties, and the court did not, therefore, go into the merits.

In the celebrated Jenkins Case the judge has been vigorously assailed for his action, and in connection therewith was threatened with impeachment proceedings before the Judiciary Committee of Congress. In this case the Northern Pacific Railway Company having gone into the hands of receivers, two days after their appointment a reduction of from 10 to 20 per cent was ordered in the salaries of employees. The employees threatened to strike to prevent the carrying out of this order, and the receivers applied to the court to restrain the men from executing their threat. Judge Jenkins issued a preliminary injunction containing the following clause:

"And from ordering, recommending,

approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad on January 1, 1894, or at any other time."

Judge Jenkins subsequently modified the preliminary injunction by striking out this clause. This case was carried on appeal from his refusal to further modify his injunction to the circuit court of appeals. The opinion of the court of appeals was drawn by Mr. Justice Harlan, of the Supreme Court of the United States.

Mr. Justice Harlan discussed the issues in an elaborate and exhaustive opinion. It appears that it was contended on appeal that the circuit court exceeded its powers when it enjoined the employees of the receivers "from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad."

The court held that this clause embodied two distinct propositions,—one relating to combinations and conspiracies to quit the service of the receivers, "with the object and intent of crippling the property . . . or embarrassing the operation of the railroads in their charge;" the other having no reference to combinations and conspiracies to quit, or to the object and intent of quitting, but only to employees "so quitting" as to "cripple the property or prevent or hinder the operation of the railroad."

The court held that the court below (Judge Jenkins) should have eliminated from the writ of injunction the words: "And from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad," but upheld the injunction in all other respects.

On the question of the distinction between the two propositions, the court said, after having called attention to the fact that the employees as a body had a right to demand given rates as a condition for their remaining in service, and to withdraw from service if it was not

granted to them, without reference to the effect upon the property or upon the operation of the road:

"But that is a very different matter from a *combination and conspiracy* among employees, with the *object and intent*, not simply of quitting the service of the receivers because of the reduction of wages, but of *crippling the property* in their hands and *embarrassing the operation* of the railroad."

In his order modifying the injunction, and the reasons given therefor, Mr. Justice Harlan simply emphasizes the familiar and well-established distinction between acts done or strikes inaugurated in pursuance of and for the purpose of carrying out a conspiracy, and such acts entirely disconnected with such conspiracy.

Of the remaining eleven cases there was no contest in seven of them, nor any demand of any kind made to modify or vacate the restraining order by the defendants.

In the remaining four cases, preliminary injunctions in the terms of the restraining order were granted in three instances, after hearing and argument.

The most recent of these instances, that of the Hitchman Coal & Coke Company v. Mitchell and als., requires more than a passing notice. This is the case where an injunction was issued by Judge Dayton, of West Virginia, which has been the subject of considerable public criticism, resulting in the publication in the Congressional Record of the injunction order; and the judge has been subjected, with reference thereto, to more or less vigorous aspersion, not only on the part of members of Congress, but upon the part of men occupying important executive office.

A brief statement of the facts will, in my judgment, show that the action of Judge Dayton in this case was absolutely justifiable, and a proper and necessary exercise of his judicial discretion in the protection of the rights of the parties concerned.

It seems that the Hitchman Coal & Coke Company were the owners of about 5,000 acres of coal; that its plant was equipped with apparatus and facilities which enabled it to produce about 1,400

tons a day; that it necessarily had large contracts for future delivery to practically the full amount of its capacity. That prior to April 1, 1906, they operated their mines by men who were affiliated with the United Mine Workers of America; that on April 1, 1906, a strike was ordered by that association, and that their employees, being members thereof, went out on a strike by virtue of that order, not because there was any controversy between them and their employers, or any dissatisfaction with reference to their employment. On the contrary, they distinctly stated that they had no grievance against the Hitchman Coal & Coke Company, but went out on a strike because coal operators in other sections of the country had refused to accede to certain demands of the association. And although the Hitchman Coal & Coke Company offered to pay them any advance in wages after April 1, 1906, that might be agreed to as a result of the strike, in connection with other coal operators (if their operators and employees would continue with the work), these members of the United Mine Workers of America were ordered by the gentleman in charge of the union to strike, and did strike, notwithstanding their willingness to agree to accept such proposition.

Under these circumstances the operations of the Hitchman Coal & Coke Company were arbitrarily suspended for about two months, at the end of which time, not being able to get union men, they began to employ men not members of the union, requiring them to contract with them not to join the United Mine Workers of America, and confined their employment to nonunion men. Having found it impossible to rely with confidence upon the United Mine Workers for effective service, they were compelled to avail themselves of nonunion labor, and endeavored to protect themselves in its employment by this contract, which, under the circumstances, was not only a wise precaution, but a clear exercise of their legal rights.

Later, the United Mine Workers of America, by their combination, confederation, and conspiracy, endeavored to compel them to reunite their works, to employ only members of the Mine

Workers' Union, to discharge their nonunion labor that they had found it necessary to thus employ in order to continue their operations, and, as the principal and salient feature of this conspiracy, to induce the nonunion employees of the plaintiff, by threats, intimidation, or persuasion, to violate the contract they had made with the plaintiffs, at the time of their employment, not to join the union, and to induce them to join the union in violation of such contracts, without the consent and against the protest of the plaintiff.

Under these circumstances Judge Dayton issued his temporary order restraining the defendants from combining and conspiring to interfere with the employees of the plaintiff for the purpose of unionizing the plaintiff's mine without the plaintiff's consent, and from inducing their employees to violate their contracts entered into by them when they entered the service of the plaintiff, and containing other provisions of a similar character. In other words, he issued a restraining order for the purpose of protecting the plaintiffs in the exercise of their rights to employ such labor as they saw fit to employ, and of the making and maintenance of such contracts as expensive experience had shown them the exigencies of their business required, and to prevent them from being compelled by intimidation, threats, or otherwise to discharge their nonunion labor, to reunite their works, to rely again solely upon union labor, and thus completely subordinate their investments to the interests of union labor and its absolute control.

It was a perfectly proper exercise of the judicial power, and the plaintiffs were entitled to the protection of the court in that regard.

It was in accordance with well-settled principles, and is sustained by the highest authority. The law recognizes the inviolability of the right of contract, and courts of equity will protect that right against conspiracies on the part of third parties to induce one of the parties to break the contract to the injury of the other.

In *Bitterman v. Louisville & N. R. Co.* 207 U. S. 205, 52 L. ed. 171, 28 Sup. Ct.

Rep. 91, 12 A. & E. Ann. Cas. 693 (which was a case between the railroad company and a scalper, and involved a contract which made a ticket not transferable by the purchaser), the court held that an actionable wrong is committed by one who "maliciously interferes in a contract between two parties," to induce one of them to break that contract to the injury of the other, and restrained a conspiracy to engage in the sale of such railroad tickets, which involved the inducing, by the scalper, of the violation of the contract upon the part of the purchaser, and held that it was not necessary, in order to justify an injunction to restrain the carrying out of such a conspiracy to thus induce one party to violate his contract with another, that the conspiracy should "involve the ingredient of actual malice in the sense of personal ill will." The wanton disregard of the rights of the contracting party, causing injury to the party by the violation of the contract, was a sufficient justification for the issuance of the writ restraining the carrying out of such a conspiracy.

This is precisely in point, sustaining Judge Dayton's order upon the crucial point involved in the case.

It was also precisely in line with the remarks made by Judge Gray in his celebrated decision in the anthracite coal strike case, concurred in by every member of the Commission, which included not only Judge Gray, but Carroll D. Wright, John M. Wilson, John L. Spalding, Edgar E. Clark, Thomas H. Watkins, and Edward W. Parker (one of whom, Mr. Clark, was a specific representative on the commission of organized labor). Judge Gray said:

"Our language is the language of a free people, and fails to furnish any form of speech by which the right of a citizen to work when he pleases, for whom he pleases, and on what terms he pleases can be successfully denied. The common sense of our people, as well as the common law, forbids that this right should be assailed with impunity. . . . The right thus to work cannot be made to depend upon the approval or disapproval of the personal character and conduct of those who claim to exercise this right. If this were otherwise, then those who

remain at work might, if they were in the majority, have both the right and power to prevent others who choose to cease work from so doing.

"This all seems too plain for argument. Common sense and common law alike denounce the conduct of those who interfere with this fundamental right of the citizen. The assertion of the right seems trite and commonplace, but that land is blessed where the maxims of liberty are commonplaces."

The right to work and the right to employ are very obviously correlative rights. The right that the Hitchman Coal & Coke Company were asserting in their application to Judge Dayton for an injunction was simply the right defined by Judge Gray in this decision, and that was the right to employ whom they liked, when they liked, and how they liked. And this right, it may be said, has been distinctly sustained by the Supreme Court of the United States in the *Adair Case*.

It should be repeated and emphasized that the employees of the Hitchman Coal & Coke Company who were to be displaced by union labor were under specific and express contracts, and that a conspiracy to induce the violation of such contracts has always been held to be restrainable as an infringement of a clear legal right. The authorities are innumerable in sustaining this proposition, and no authority can be found that denies it, and it should be remembered that Judge Dayton's order in this particular case was expressly predicated upon the knowledge of the defendants of the existence of such contracts, and their deliberate purpose to induce their violation.

This was one of the grounds upon which the court proceeded in the case of *Thomas v. Cincinnati, N. O. & T. P. R. Co.* (4 Inters. Com. Rep. 788, 62 Fed. 803), in which the able opinion was drawn by Honorable William H. Taft, and the action of Judge Taft in this case is a specific precedent on all fours justifying the action of Judge Dayton in issuing this injunction. He said: "The breach of a contract is unlawful. A combination with that as its purpose is unlawful and is a conspiracy."

In the remaining three injunctions of

the eighteen to which I have referred, in the case of the Rocky Mountain Bell Teleph. Co. v. Montana Federation of Labor (156 Fed. 809), a restraining order was issued after notice of motion and hearing.

In the case of the Allis-Chalmers Co. v. Iron Moulders' Union No. 125 (150 Fed. 155), a preliminary injunction was granted after filing of supplemental bill and after motion, hearing, and argument.

In the case of Newport Iron & Brass Foundry Co. v. Iron Moulders' Union (September 27, 1904), the record does not disclose whether or not the restraining order was issued before the final decree.

Thus the papers filed with the committee show eighteen restraining orders of the circuit courts of the United States, covering a period of fourteen and a half years, only one of which has been modified by an appellate court.

While I have no complete injunctions that have been issued by Honorable William H. Taft while he was a circuit judge, it is well known that they are generally held in high esteem, and of the orders in the cases filed with the committee there are none which differ substantially from the orders of injunction, so far as I have been able to ascertain, issued by this distinguished judge in *Thomas v. Cincinnati*, N. O. & T. P. R. Co. (4 Inters. Com. Rep. 788, 62 Fed. 803), or *Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co.* (5 Inters. Com. Rep. 522, 54 Fed. 730, 19 L.R.A. 387), so far as these orders appear to be stated in the opinions rendered in the course of the decision.

In the *Thomas v. Cincinnati* Case, as an illustration, the defendant, Phelan, was enjoined "from, either as an individual or in combination with others, inciting, encouraging, ordering, or in any other manner causing the employees of the receiver to leave his employ with intent to obstruct the operation of his road, *and thereby compelling him not to fulfil his contract and carry Pullman cars.*"

Before leaving the list of the cases filed by Mr. Gompers with the committee, attention should perhaps be called to one other case, that of the *Reinecke Coal*

Min. Co. v. Wood (112 Fed. 477). Under the circumstances disclosed in that case, the defendants and others had invaded the Hopkins district in great force, establishing armed camps in the vicinity of the nonunion mines, which were maintained for many months, and the roads patrolled and the approaches to the mines picketed for the purpose of coercing and intimidating miners to join the union and cause a strike unless the union scale was adopted. Nonunion men were constantly threatened and assaulted, and when defensive measures were adopted there were constant collisions and disorders.

The court found that the conditions sought to be brought about were—

"Undesired and vigorously repelled by the employers and a vast majority of the employees" . . . and said: "If this court cannot in a case like this protect the rights of a citizen when assailed as those of the complainant have been in this instance, there is a decrepitude in judicial power which would be mortifying to every thoughtful man."

Some of the cases submitted present a graver condition even than that of the *Reinecke Coal Mining Company Case*. I do not go so far as to say that all of the eighteen cases of injunctions and restraining orders submitted by Mr. Gompers are parallel in all respects to the *Reinecke Coal Mining Company Case*, or the *Hitchman Coal & Coke Company Case*, or the *Western Coal Min. Co. v. Puckett* (November 21, 1899), or the *Telephone Case*; but in the absence of any specific criticism on their part, I do say that I have not been able to find any out of the eighteen submitted by them that are the proper subject of legal criticism. If there are any facts involved in any of the cases that subject the action of the court in entering the decrees to proper criticism, these facts have not been called to our attention. And upon the face of the papers submitted to us, instead of the cases showing an abuse of the power of injunction, they would show its reasonable and legitimate exercise, and are only subject to criticisms upon the ground that any use whatever of the power of injunction is understood by the labor organizations to be an abuse of judicial power.

The Lawyer's Words

BY ALBERT S. OSBORN

Author of "Questioned Documents"

[There are many books in which lawyers have spoken to lawyers on the conduct of trials and the art of persuasion. Mr. Osborn's article is novel in that it treats these questions from the view point of one who has participated in many trials as an expert in handwriting.—Ed.]



THOSE who have the opportunity of hearing numerous cases tried in various courts, in different localities, must observe the widely varying scale of quality in law practice, a variation wider perhaps than in any other profession. It ranges from the sometimes unappreciated but masterly skill of the legal artist down to the bungler who does not know law or men and cannot express what he does know. It has been suggested that if clients really knew how badly their cases had been tried they would endeavor in many instances to develop a new class of law work under the general head of "malpractice."

The trial of a suit at law is an intricate, difficult intellectual performance, so poorly done so many times perhaps because those who pay the bills may be no better judges of its real quality than they would be of the comparative merits of ancient Greek art. Counsel are praised for fatal errors and blamed for doing the right thing. Litigation with the average citizen is only occasional,—happy for him that it is,—which may account for his inability to judge of its quality.

Much of the difference in law practice arises from varying degrees of skill in the effective use of language. Ideas must, of course, come first, but words are in fact the lawyer's tools; with them he achieves success, or because of them meets defeat. Old-style oratory in courts of law has gone out of fashion, but words still represent or misrepresent ideas; and the planting of ideas is the important part of the work of the lawyer.

In the old days the courthouse was famed for ear-splitting oratory and fiery rhetoric, and the country people came for miles to hear the lawyers "sum up." Law practice has not deteriorated, but results are now obtained in a somewhat different way and with less noise, but words are still the principal medium by which mind communicates with mind. Language, however, is now used rather to persuade than to thrill and to entertain, and the high art of persuasion might well form a definite part of every lawyer's course of study.

A familiar acquaintance with Plato and that famous old teacher of his has helped many who would learn to convince; and full of suggestion is Franklin's quaint recital of how he improved himself in the art of leading others to see as he saw, and thus, as he modestly says, qualifying himself to be of some little use to his country.

As was said of Webster's words, in the right place a word may weigh a pound, but it must be the right word, and yelling will not make up for poor selection. It is said there are really no synonyms, and of this we are convinced when we hear a thought appropriately expressed. There must be thought first, but alas! there may be thought without effective expression, as well as empty words.

Often the most effective part of an argument is a skillful inquiry,—a Socratic question that penetrates to the very heart of a subject, and serves to put in motion the receiving mind that is being worked upon; then a statement with just the proper emphasis gains admission almost unawares, and an idea is planted in the mind of another. The whole operation is like the skilful playing of a delicate and complicated instrument, that requires not only knowledge of the subject, but knowledge of the instrument.

A very useful course of training for a lawyer would be something equivalent to a season of actual practice in difficult salesmanship. Let the lawyer who seeks to completely prepare himself for his most important and difficult work take the temporary agency for some poor-selling book, and in this way make a practical study of the entrances to the human mind. Perhaps one of the first things he will learn is that it is possible to antagonize people by one unfortunate sentence, and he may discover that there is such a thing as a right and a wrong order of statements. He may learn that it is not simply necessary to say it all, but that he must say first what should be first said, or it will not be necessary to say anything at the last. It is easy enough to see that some lawyers have never attempted to sell goods, or, perhaps having failed in the attempt, they have then become lawyers.

The citadel of the mind may be captured in more ways than one, but an entrance is not often gained without a proper approach. The first sentence of an argument is often the most important sentence because it is the first. By it interest is kindled, suspicion disarmed, and confidence awakened; or antagonism aroused, and a prejudice created that cannot be overcome. The mind opens or shuts according to the hailing sign given; the truth may be told in such a way that it is not believed.

There are, no doubt, certain laws of persuasion that underlie successful argument. Might not one of them be that it is not well to attempt to put an idea full grown and complete into the mind of another, but, rather, that it should be skilfully planted, and then tended and nurtured with rich words until it develops into a mature thought. But the other extreme of undue caution may also be fatal, and the mental fort is not captured because a too circuitous line of attack is followed.

One of the greatest enemies of persuasion is suspicion, and until this is removed words are vain, and simply tinkle. Frankness dispels doubt; and, first of all, if one is to be believed he must believe himself. Sincerity carries its own stamp of genuineness. Even in children and dogs there seems to be an instinct that recognizes insincerity by nearly all the five senses, and certainly by sight and sound.

The lawyer in every way possible should try to avoid always seeming to be an advocate, and especially a paid advocate. Too many lawyers give the impression that they are trying too hard to protect a client's interests. If they appear for the defense they give the impression that by every means they will attempt to prevent the guilt of their client from becoming known, and they will not grant that the opposition has even a shadow of a leg to stand upon. As a result, everything they say is discounted, and often might, with equal effect, be spoken in the words of some dead language.

The creation by a trial lawyer of a correct atmosphere surrounding the trial of an issue in court is one of the results of consummate ability, and is brought to pass in great measure by words fitly spoken, that are indeed apples of gold.

The Editor's Comments

A brief discussion of timely topics.

Case and Comment

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Edited by Asa W. Russell

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A Word from the Editor

A reader of CASE AND COMMENT, who recently sent us an excellent original article, wrote, "I do not know if you desire contributions from sources outside of your staff." We replied: "We are always glad to receive contributions from our readers; the more the better." And that is the message we want to send to all our friends who peruse CASE AND COMMENT. We ask each of you to aid the others by sending us of your best for the benefit of all.

Give us your views in an article of say 2,000 words or less, on topics consonant

with our special numbers, elsewhere announced, or on any subject of general interest to the profession that may appeal to you.

Anecdotes of lawyers, interesting incidents arising in legal practice, quaint and curious or humorous legal happenings, are always acceptable.

Write us some of those practical hints and suggestions—born of experience—that were told you by some venerated preceptor, or which you tell to the young men studying under you.

If you approve or disapprove of the teachings of CASE AND COMMENT, send us a pointed paragraph for our "Readers' Comments."

Your kindly interest will help CASE AND COMMENT to justify its sub-title, "The Lawyer's Magazine."

New Court Rules

WHEN the supreme court convenes in September, after the summer vacation, an important new rule of practice adopted by the justices of the appellate division of the supreme court of New York at their convention in Albany last April will be effective. The new rule provides that, on the opening of a case and before any evidence is taken, the attorneys for both the plaintiff and defendant shall state what they expect to prove.

Almost since the beginning of the courts in this state it has been the practice for the attorney for the plaintiff to state what he expects to prove by his witnesses, and then present their testimony before the jury. This has been followed by the statement of the attorney for the defendant, who then proceeds to offer his evidence. It is believed that the immediate presentation of both sides will give the jurymen a clearer conception of what the trial is about. The new rule does not apply to criminal cases.

Another new rule requires that on the sale of real property of an infant, a surety company's bond must be given by

the guardian for twice the amount of the sale, including interest on the sum during the minority of the infant, or the infant may be secured by a mortgage on improved and unencumbered real estate for the same amount as is required for the bond. Personal securities will no longer be accepted. The purpose of this rule is to avoid the losses and scandals which have arisen in the past whereby bonds, perfectly good when they were given, have become valueless.

Photography and Law

“**E**VER since the days of Daguerre,” says the Photo Era, “photography has been regarded as the one infallible means of portraying faithfully any object, scene, or action. Indeed, a photograph is admitted in court as irrefutable evidence; for when everything else fails, a picture made through a photographic lens almost invariably turns the tide. However, such a picture, upon which the fate of an important case may rest, should be subjected to critical examinations; for it is an established fact that a photograph may be made as untruthful as reliable. Combination photographs change entirely the character of the initial negative, and have been made during the past fifty years.

“Everybody is familiar with the changes that can be wrought by the retoucher in a photographic portrait. A practitioner of even ordinary skill can introduce the figure of a patron (made in the studio) into an open air view, well blended and in complete harmony with the surroundings,—without a visible trace of its falsity. It is even possible to represent a person crossing the Mer de Glace or walking in the Avenue des Capucines,—places he has never visited in the flesh. Thus, a person charged with an offense may be able to prove an alibi by the aid of a skillfully prepared combination photograph. By means of a double exposure, and without resorting to manipulation of the negative, a person may be made to appear to be doing all sorts of impossible and ludicrous things, such as playing chess, cards, or fighting a duel with himself, carrying his head under his arm, or holding communion with a departed spirit. In this manner the camera appears to have re-

corded successfully all kinds of startling phenomena, and with a realism convincing to all except the expert and the initiated.

“Where, then, can photography be considered as irrefutable evidence?”

“The photo-speed recorder—the joint invention of two professors of Massachusetts Institute of Technology—is an apparatus which determines with absolute scientific accuracy the rate of speed at which a motor car is moving. Hence, it has been sustained in the highest court of Massachusetts as incontrovertible evidence in cases of violation of the automobile speed law.

“Motion pictures, when taken and projected with scientific precision, and properly authenticated, constitute the most trustworthy and convincing testimony of an occurrence that is possible to conceive. Proof, such as this, is well nigh infallible.

But even what is recognized as straight, genuine photography is not altogether devoid of misrepresentation, involuntary though it may be. This takes the form of distorted features and limbs, also of exaggerated perspective visible in buildings, streets, etc.,—due to the application of a lens of inadequate focal length. Hence, faithful portrayal depends upon the correct employment of the most suitable apparatus and materials,—from the making of the exposure to the completed print, the negative being of supreme importance.

“Danger, therefore, lies in the lack of technical knowledge with regard to the possibilities of imposition by photography. It will not do to rely entirely upon a photograph, whether it be made on paper, glass, metal, or any other base. The shrewd judge and counsel will insist that in every case the negative be submitted, and examined for possible alterations by a clever manipulator. Members of the legal profession should practice photography to familiarize themselves with photographic methods, legitimate and otherwise, the better to appreciate the testimony of experts and practitioners with regard to photographs and their preparation, more particularly to negatives. Therefore it follows that only after a most careful examination has shown the absence of possibility of a photograph

being a false picture ought it to be used as evidence."

Another phase of our subject, photography and law, is presented by the practice of taking snapshots in and about the courts. Sketching has recently been stopped in the English divorce courts, but a London editor complains to the Times that photography is still generally allowed. Witnesses and persons on trial, who may not be guilty, are subjected to the ordeals of cameras leveled at them, and indifferent pictures appear next day in the public prints. Parties engaged in litigation are photographed coming in and going out of the courts. The London Law Journal remarks: "To the judges belongs the power of stopping the objectionable practice. They could, and we hope they will, make an order prohibiting the use of the camera in the courts in which they preside, and any disobedience of such an order, whether the photographer or editor, would be punishable as a contempt of court."

Individuality on the Bench

IF the laws were an exact science, says the Kansas City (Mo.) Star, it would make no difference who were judges of the Supreme Court of the United States, or any other court, so that they were honest men and learned in the law. Their decisions would be worked out with mathematical precision. In fact, if the law were an exact science there would hardly need to be any courts at all, except those for criminal trials.

The law not being an exact science, the Supreme Court of the United States

has always held one of the most interesting groups of men in the world. There are individuals in that tribunal's history who stand out as attractively and distinctively as do the most prominent of the statesmen whose service was not on the bench.

It has been remarked that the late Justice Brewer was one of the few Supreme Court justices who took a part in the usual activities of the people,—their politics, economics and every-day interests. This he did. But aside from this, he, in common with all other members of the Supreme Court, did, on the bench, impress his own strong personality upon the affairs of the people. A court of nine men, with Justice Brewer in it, must necessarily be different, not only in personnel, but in effect, from such a court with Justice Brewer out of it. And so of every member of the court. No two sets of nine men would decide the law alike, or hold the affairs of the nation to quite the same complexion. "The king is dead; long live the king!" The kingly office goes on, but who is king marks differences in history. So the court and the law are permanent institutions, but those who administer them mark differences.

Changeless and eternal, one may believe the abstraction called Justice to be. But the pleasing, progressive, infinite variety of human affairs gets into her temple in the individual qualities of her Justices. A court whose annals preserve the differing geniuses of John Marshall, Roger B. Taney, and Salmon P. Chase, to cite no others, is not of the stuff to petrify. It will always be fluid with the life of the nation,—the current of its ideals, its aspirations, its necessities.

The Readers' Comments

A department for the candid and courteous expression of opinion—whether concurring or dissenting.

Weeding Out Poor Lawyers.

Editor CASE AND COMMENT:—

The July issue of CASE AND COMMENT contains an article on page 74, under the caption "Taxing the Lawyers." CASE AND COMMENT quotes the Battle Creek Journal as saying the Honorable James Helme comes "forward with an idea." Says James: "There is a dog law which helps eliminate worthless dogs. Tax the lawyers of the state. We have too many of them, and a tax of \$25 or \$50 each would help weed out the poor ones."

A just process of weeding out the poor lawyers would never be accomplished by the senseless process of taxing each member of the profession.

Is opportunity invariably the result of talent, ability? If so, I want to ask: Since when? Is a man without superior ability because he is born in poverty-stricken circumstances? Mr. Helme, by the process of his "reasoning," says so. Such a theory is abhorrent to any fair and sane-minded man. What man needs is not more restraint, but more liberty, more opportunity. Some boys undertake the study of the law because their fathers are in affluent circumstances, totally oblivious of their aptitude and natural fitness. Would he be weeded out by a process of taxation? Since when? How? The poor boy, on the other hand, endowed with every natural aptitude and fitness, puts in years of incessant and self-sacrificing toil to become a member of a profession which he at last reached only to be confronted with the necessity of the financial payment, the wherewithal he has not. Would that be just? If so, then the dollar unit is the manhood measurement. What would become of the profession thus imbued? It would naturally and inevitably degenerate, as it must and ought. Where would be the ethics of a time-honored profession? Nonsensical all, completely, entirely, absolutely.

Some states require a stated school period of study, not qualification necessarily and purely so. This is, as it must have been intended to be, a prohibitive bar to the poor but ambitious, and, in all other respects, a worthy boy. This operates as a rank injustice to the poor boy, is damaging to society, and detrimental to the body politic. The state will proceed with its paricidal ingratitude, and ask that same boy, whom it has denied every legitimate and constitutional right, to stand in its defense in its hour of peril. Could anything be more rankling? How much gratitude do I owe those who are only engaged in the curtailment of my absolute liberties? Let those answer who pretend to be the measurers of my happiness. The doctrine of Mr. Helme is simply this: I am in and you are out. You stay out. It is pure-

ly the doctrine of exclusiveness. If Mr. Helme feels that the legal profession is overcrowded, then let him exercise his sovereign right of withdrawing. There is absolutely no line of employment without its more than required number of hands and brains, yet I should decline to lay a prohibitive bar to the entrance of any calling. Has not the child born after me as much right to the selection of its own channel of employment as it has to the pursuit of happiness? The one is co-ordinate with the other. Deny or restrict the one, and the other is necessarily extinguished. It certainly is.

It has also been contended on the part of others that it is doubtful whether or not the legislature can impose the qualifications of members preparatory to engaging in the profession of the law, but that it should be left to the court to determine the qualifications of its members. This contention is equally foreign to constitutional logic. The body which makes the law must of necessity have the sovereign right of determining the qualifications of those who wish to engage in the practice of the law. Such cannot in reason be left to the discretion of the court. Why should it? If this is the undisputed right of the court as against the legislature, then I want to say that the court is in the exercise of a counteractive office against the legislature. It certainly is.

I ask CASE AND COMMENT to publish this letter, or reject it, and thus show its colors, demonstrate its principle of fairness and justice.

M. G. LILLIG.

Salida, Colo.

What, Muzzle the Lawyers?

Editor CASE AND COMMENT:—

We read with some degree of interest the idea and expressions of the Hon. James Helme of Adrian, Michigan, relative to the Michigan dog law, which appears to have been enacted to rid the state of the many worthless dogs that infest it. From the effect of this law he thinks a similar one taxing the lawyers in general would rid the state and the profession of the "poor ones." I confess that I do not know whether he means the "poor ones" with regards to wealth or ability, the adjectives "poor" and "worthless" having vastly different meanings, although they appear to be synonymous. But will a license tax of \$25 or \$50 rid the state of Michigan and the profession of "poor lawyers?" Is that the most effective remedy? I do not think so. What is the cause or source of an influx or overrunning of a state or country with "poor lawyers?" Is it due to the want of a tax of sufficient size on the members of the profession? Where lies the cause? Perhaps if Mr. Helme examine the curriculums of the law schools he may find that they need

some attention, or perhaps if he examine the corps of teachers of the law schools he may find that the dog tag tax is needed there.

There is a remedy somewhere, and it can be found, and if the profession is so crowded in Michigan that Mr. Helme's professional territory is being invaded or the standard of the profession lowered, I suggest that the legislatures of his and other similar states enact a more stringent law for admission to the bar. Then let the examining tribunals discharge their full and sworn duties in connection therewith. In many states the law and rules for admission to the bar are very lax, but as lax as they are, they are far superior to the license tax method. In some states applicants are admitted to the bar upon the recommendation of the dean of the school from which they come, in some they are admitted upon the presentation of a diploma from a presumably recognized school of law; in still some others, they are admitted upon the recommendation of an examining committee of lawyers appointed by the judge of the circuit or superior court when he has not the time to examine the applicants himself. While each of these methods, and perhaps some others, have given to the profession some of the ablest minds of the profession, none is equal to that of having applicants for admission to the bar passed on by the supreme court of the state, which tribunal invariably gives a rigid and thorough test.

Don't muzzle the "worthless" ones or tax the "poor" fellows, because the taxing process will not give the desired relief. In this state the license tax on lawyers—and each member of a law firm must have a license—is \$15.25, and this city has an additional tax of \$15; these license taxes are payable annually. A year ago the county solicitor brought criminal action against several individuals for doing business without a license. Among those against whom cases were docketed were several lawyers, some standing in the front rank of the members not only of the local bar, but of the state bar; eminent criminal and civil lawyers, some of whom are worth many thousands of dollars, and live in residences that cost several thousands of dollars. The "poor" lawyers, as a rule, are the ones who pay license tax first. Hence, a license tax, a tag or a muzzle, should not be used to accomplish that which the curriculums, professors, or deans of our law schools should do. The license tax should be used as a necessary revenue for the state, county, and city. When the law schools and their agencies are inefficient or the method of admission is too loose, the legislature should strengthen them, or rid the profession of the "poor" and "worthless" by placing the matter of admission to the bar in the hands of the supreme court, with rigid and stringent rules.

Tampa, Fla.

[CASE AND COMMENT is not in favor of taxing lawyers for the purpose of elimination. Those who are "poor" in spirit or deficient in the elements of success will eliminate themselves. Those who are "poor" in purse have

enough to contend against without being burdened with unnecessary taxation. A career at the bar has always been open to every young man, inspired with honorable ambition, and ought to remain so.—Ed.]

South Dakota's Streams are Pure.

Editor CASE AND COMMENT:—

In reading your July number CASE AND COMMENT I find upon page 96, under head "*Ita Lex Scripta*," the proviso attached to sec. 4, chap. 139, Session Laws South Dakota 1909, regarding the incurring of municipal indebtedness "for the purpose of providing water and sewerage for irrigation, domestic uses, sewerage, and other purposes."

Permit me to call your attention to the first proviso of sec. 4, art. 13, Constitution of South Dakota as it now is. You will note that the law of 1909 follows verbatim the language of the Constitution. The proviso was not included in the original Constitution framed and adopted in 1889, under which the state was admitted into the Union. Said art. 13, simply limited the debt of any county, city, town, school district, or other subdivision, to 5 per centum upon the assessed valuation of the property therein, and so remained until 1896, when an amendment to said section was adopted by popular vote, having been submitted by the legislature of 1895, which provided "that any county, municipal corporation, civil township, district, or other subdivision may incur an additional indebtedness not exceeding 10 per centum upon the assessed value of the taxable property therein, for the purpose of providing water for irrigation and domestic uses." The legislature of 1901 submitted to the people the proviso as given in your article, which was adopted in 1902, at the regular election, and under which the law of 1909 was undoubtedly drawn.

The mixing of water and sewerage may possibly be accounted for upon the supposition that the learned legislator who drafted the proviso might have mixed Missouri river water with his ordinary beverage. Otherwise the language is not easily understood. The question arises, if under the Constitution and laws of South Dakota, pure water can be obtained. The writer answers that after a residence of more than twenty-six years in the territory and state, he can affirm that pure water, as pure and cold as found anywhere, abounds in abundance, notwithstanding law-makers to the contrary, and is used as a beverage by a large majority of our citizens. Great is the wisdom of the lawmakers.

S. V. JONES.

Parker, S. D.

Is the Uniform Entitled to Respect?

Editor CASE AND COMMENT:—

In a recent issue of your piquant little and ever-welcome CASE AND COMMENT, you have an article anent the Hobson Bill pending in

Congress. You say: "The uniform is a symbol of loyalty and of patriotic devotion. It is entitled to respect, next to the flag." How can *you* respect the covering and gilding if you do not respect the man (or it may be, hoodlums), within? What legal power based on right have you to force open the entrance for such into what the bill designates as "Public Places?" First define that term, and see where you'll land. Patriotism, at all times and everywhere, is in uniform.

STEPHEN DE PARRISH.

Richmond, Ky.

[We do not see any valid objection to a measure forbidding the exclusion of men from public places simply because they are wearing the uniform of the Military or Naval service of the United States. The uniform means much to the wearer, and means much to the nation of which its wearers are the sworn defenders. It ought not to be placed under the ban of a general and humiliating discrimination. Why not admit our soldiers and sailors to places of entertainment or amusement on an equality with civilians, subject to expulsion in individual cases, in case of misconduct?—Ed.]

Unusual Arbitration Plan

"SO far as I know," writes a member of the Commonwealth Club, according to the New York Sun, "the most unusual method of voluntary arbitration is that instituted by the Chamber of Commerce in London, England.

"The great dock laborers' strike, which occurred in London about 1891, paralyzed for the time being the trade and commerce of that city. The Chamber of Commerce was besieged by merchants and manufacturers to prevent a repetition of such a calamity, and the matter was referred by the chamber to one of its prominent members, Sir Samuel Boulton.

"His proposal was that the Chamber of Commerce elect from among its members, for the period of one year, a panel of twelve representing the various trades and industries. That the trade unions likewise elect from among their members, for the period of one year, a panel of twelve representing the various trades and industries.

"In the event of a labor dispute being submitted for arbitration, the president of the chamber was to select one or more from each panel, as might be agreed upon by the parties to the dispute. This arbitration board, consisting of an equal number of employers and workers chosen because of their technical knowledge of the matters in dispute, but in nowise directly

interested in such dispute, and without the customary selection of an odd member, was to conciliate, investigate, and arbitrate.

"When the plan was first given publicity there were few who looked upon it with favor. The opinion prevailed that, without the odd member on the proposed arbitration boards, no decisions were likely to be reached and that hung juries most likely would follow. It was only human to expect the workers on the board to decide in favor of their fellow workers and the employers on the board to decide in favor of their fellow employers. Sir Samuel Boulton succeeded, however, in securing a reluctant consent to a trial of the plan.

"When I was in London last fall the plan had been in operation for more than seventeen years, and had scored the remarkable record of settling to the satisfaction of both sides every dispute which had been submitted during this long period. Sir Samuel Boulton told me that, however widely the arbitrators may differ in the beginning, without exception in the history of the movement, the decisions during all of these seventeen years had been unanimous, and that without exception both sides had accepted such decisions in good faith."

Among the New Decisions

Comments on recent important or novel decisions made
by the courts of the English speaking world.

Disposition of appeal where record is lost or incomplete.

Where a convicted defendant perfects his appeal to a court of last resort, and the record in the cause becomes lost or destroyed, without fault on the part of the defendant or his counsel, and said record cannot be substituted, it is held in the recent Oklahoma case of *Bailey v. United States*, 104 Pac. 917, that a motion to reverse the judgment and award a new trial is properly granted to prevent a miscarriage of justice or a deprivation of the legal right of appeal. This rule is supported by the weight of authority, and no distinction has been made in this regard between civil and criminal cases. The rule presupposes that there is no means available to appellant of restoring the record. Where such means are available, he is, of course, bound to avail himself of them. Some courts, however, as appears by the note which accompanies the *Bailey Case*, in 25 L.R.A.(N.S.) 860, take the view even when restoration is impossible, that the loss of the record or the portion thereof essential to the consideration of the question raised by the appellant, though not his fault, is his misfortune, and therefore dismiss his appeal, or, in some instances, indulge the presumption that the lost portion of the record would sustain the judgment appealed from, and dispose of the appeal on the merits upon that assumption.

Disbarment for failure to inform court.

A question not heretofore passed upon by the courts is presented in the case of *People ex rel. Healy v. Case*, 241 Ill. 279, 89 N. E. 638, 25 L.R.A.(N.S.) 578, holding that an attorney bringing a suit for divorce upon the identical pleadings upon which, after full hearing, another court of concurrent jurisdiction has dismissed the suit for want of equity, is bound to disclose that fact to the court, under penalty of disbarment or suspension for failure to do so.

One attempting to take car as passenger.

The relation of carrier and passenger is one of contract, express or implied, and it may be established by any evidence showing an intent upon the part of a person to become a passenger, and his acceptance as such by the carrier. Depending as it does upon the question as to the sufficiency of the facts to establish the contract, it is not practicable to establish a rigid or arbitrary rule as to what facts will constitute this relation. That one attempting to pass in front of a standing street car to take passage thereon is not a passenger within the rule that carriers must furnish reasonably safe appliances for the accommodation of passengers in getting on and off trains is held in *Jaquette v. Capital Traction Co.*, recently decided by the District of Columbia court of appeals, and accompanied in 25 L.R.A. (N.S.) 407, by a note discussing the recent cases on the effect of signaling a car to make one a passenger, the earlier cases having been discussed in 13 L.R.A. (N.S.) 283.

Uncontradicted statement in presence of accused as confession.

The failure of a person to contradict or explain statements or declarations made by third persons in his presence and hearing, charging him with a crime or tending to incriminate him, raises or may raise an implication of admission of the truth of such statements or declarations on his part, and is competent evidence as an indication of guilt of the crime charged, when the circumstances of the case are such as to afford an opportunity to act or speak and such as would naturally call for some action or reply from men similarly situated; but no inference of acquiescence arises from mere silence under accusation, where the circumstances were not such as to call for a statement by him, or from a refusal to answer unauthorized questions, or from statements or actions evincing of innocence, or when the state-

ment or declaration made in his presence is of doubtful import, and not inconsistent with his innocence of the crime charged. In short, the implication of admission arises only where he was silent when the circumstances were such that he ought to have spoken, and a reasonable man similarly situated would naturally have spoken. So, it is held in *O'Hearn v. State*, 79 Neb. 513, 113 N. W. 130, that statements or confessions made in the presence of one accused of crime who remains silent are admissible in evidence if the time, the place, and the circumstances are such as to lead to the inference that the accused, by his silence, assented to the truth of the same. And in the recent North Carolina case of *State v. Record*, 65 S. E. 1010, it is held that upon trial of one for larceny, uncontradicted declarations of his wife, made in his presence, to the effect that stolen property found in the house belonged to him, are admissions against him. These cases are accompanied in 25 L.R.A. (N.S.) 542, by a subject note, which exhaustively presents the case law upon this interesting question.

Regulation of speed of interstate trains. How frequently and how much can a railroad company be compelled, by a state statute, to check the speed of its trains without interfering with interstate commerce? This question has arisen in the state of Georgia and has found its way finally to the Supreme Court of the United States. That court recently decided in *Southern R. Co. v. King*, U. S. Adv. Sheets, p. 594, that a state may regulate, at least, in the absence of congressional action upon the same subject-matter, the manner in which interstate trains shall approach dangerous crossings, the signals which shall be given, and the control of the train which shall be required under such circumstances. The court further determined that general averments in an amended answer in an action to recover damages from a railway company for a wrongful death caused by violation of Ga. Civ. Code, § 2222, requiring the slackening of speed at highway crossings, that such statute violates the commerce clause, and is a direct burden upon and impedes

traffic, and impairs the usefulness of the railway company's facilities for that purpose, and that it is impossible to observe the statute in carrying mails and in interstate commerce business, are not sufficient as against demurrer, since they are mere conclusions, and do not show the number or location of the crossings at which the railway company will be required to check the speed of its trains, nor that the particular crossing is not a dangerous one.

The husband of Josephine King was killed by a train on the Southern Railway while he was attempting to drive over the track in a buggy at a highway crossing to which this statute applies. The widow brought suit against the railroad corporation to recover damages for having thus wrongfully caused her husband's death, and she alleged in her complaint that the negligence of the defendant was its violation of the state law, which required it to check and keep checking the speed of the train while approaching the crossing at which her husband was killed.

The defense of the railroad company was that the state law imposed an unconstitutional burden on interstate commerce. The answer alleged that it was impossible to observe the Georgia statute and at the same time carry the mails as the Southern Railway Company was required to carry them under the contract it had with the government; furthermore, that it was impossible to do interstate business and at the same time comply with the terms of the state law. This defense was overruled in the United States circuit court in the northern district of Georgia, where the case was tried, and the widow recovered a judgment against the railroad company. That judgment was affirmed by the United States circuit court of appeals. The case was then taken to the Supreme Court of the United States.

A majority of the judges of the Supreme Court, as we have stated, thought that the defense was not pleaded in such a way as to be available to the railway company. The prevailing opinion was written by Mr. Justice Day, who declared that an inspection of the answer showed that it did not contain a proper averment

of the facts to the effect that the operation of the statute in controversy was such as unlawfully to regulate interstate commerce. According to the view of the majority, this averment was a mere conclusion, setting forth no facts which would make the operation of the statute unconstitutional. Mr. Justice Oliver Wendell Holmes and Mr. Justice White dissented, holding that the averments that it was impossible to obey the statute and at the same time transport the government mails, and that it was impossible to do an interstate business and also observe the requirements of the state law, were pure allegations of fact, which referred to physical conditions and constituted an adequate statement of the railway company's defense. The dissenting judges deplored the action of their associates in treating a merely technical objection to the pleadings as fatal to the defense. "It seems to me a miscarriage of justice," said Justice Holmes, "to sustain liability under a statute which possibly, and I think probably, is unconstitutional, until the facts have been heard which the petitioner alleged and offered to prove."

After this distinct intimation from two members of the Supreme Court of the United States that the Georgia statute is unconstitutional, it is tolerably certain that the question will be raised again in such a form as to obtain a positive adjudication as to its validity one way or the other.

Validity of sale of expectancy by prospective heir. The rule of the common law was that the sale or assignment of a mere expectancy by the prospective heir was void, although, when based upon a sufficient consideration, such transactions were sustained in equity. The recent Kentucky case of *Spears v. Spaw*, 118 S. W. 275, in conformity with this rule, holds that an attempted conveyance by heirs apparent of their interest in the property of the ancestor, even with the latter's consent, is void. In some cases, however, such assignments have been upheld at law, under the doctrine of estoppel, as appears by the note accompanying the *Spears Case*, in 25 L.R.A. (N.S.) 436, and which is supplemental

to earlier notes in 32 L.R.A. 595, and 33 L.R.A. 266.

It has also been held in the recent Tennessee case of *Taylor v. Swafford*, 123 S. W. 356, 25 L.R.A. (N.S.) 442, that a *feme covert* cannot convey her expectant interest as heir of her father.

Liability for malicious erection of fence. It is generally held that the malicious erection of a "spite fence" will not give the injured party a remedy either at law or in equity. However, the contrary has been decided in one or two states, and the recent case of *Barger v. Barringer*, 151 N. C. 433, 66 S. E. 439, holds that to maliciously construct a fence on one's property to cut off the light and air from his neighbor's windows is actionable, and is accompanied in 25 L.R.A. (N.S.) 831, by a note which discusses the earlier cases pertaining to the question.

Labeling retail packages of food. The recent Michigan case of *Armour & Co. v. Bird*, 123 N. W. 580, 25 L.R.A. (N.S.) 616, is apparently the first to squarely present the question whether the requirement of pure-food laws as to labeling applies to small retail packages taken from the original package of the manufacturer. It is there held that packages of sausages composed of meat and cereals, sold to consumers from a large package, must be labeled so as to show the fact of the combination, under a statute requiring mixtures and compounds recognized as ordinary articles of food, to be labeled in a manner plainly and correctly to show that it is a mixture or compound

Right of beneficiary to pay assessments. The recent case of *Proctor v. United Order of the Golden Star*, 203 Mass. 587, 89 N. E. 1042, 25 L.R.A. (N.S.) 370, holding that the beneficiary in a mutual benefit certificate has no right to reinstate the member against his will by paying assessments which he has passed, seems to be one of first impression.

Duration of contract of hiring. The review in a case note in 25 L.R.A.

(N.S.) 529, of the numerous decisions upon the duration of a contract of hiring which specifies no term, but fixes compensation at a certain amount per day, week, month, or year, shows the existence of considerable conflict, and leaves some doubt as to whether the opinion that such a hiring is for the full period, or the contrary view, that it is indefinite and terminable at the will of either party, is better supported by the authorities. The note is appended to the case of *Warden v. Hinds*, 90 C. C. A. 449, 163 Fed. 201, holding that a contract for personal services at a certain sum per week, with no mention as to its duration, may be terminated by either party at any time, without notice.

Liability of master for injury to minor servant misrepresenting age. This somewhat unusual question is presented in the recent Kansas case of *Lupher v.*

Atchison, T. & S. F. R. Co. 106 Pac. 284, holding that the fact that a brakeman obtained his position by falsely stating that he was of full age when he was in fact but eighteen years old—a rule of the company forbidding the employment of minors in that capacity—does not relieve the company from its obligation to exercise the same care for his protection that is due to any other employee, or disentitle him to recover for an injury due to the want of such care, and not occasioned by his minority or immaturity. A discussion of the few cases heretofore treating the subject may be found appended to the report of the *Lupher Case* in 25 L.R.A.(N.S.) 707.

Assumption of risk. An engineer who discovers while en route, that the locomotive is defective, is held in *Koreis v. Minneapolis & St. L. R. Co.* 108 Minn. 449, 122 N. W. 668, 25 L.R.A.(N.S.) 339, not to assume the risk of injury from such defect, as a matter of law, by continuing his run. It is considered that a railroad engineer owes a duty to the public as well as to his employers, and is justified in taking much greater risks than employees in

other occupations, without necessarily forfeiting the right of action for injuries resulting from his master's negligence, of which he has knowledge.

It is a general rule that a servant who injures himself by overstraining his muscles in overexerting himself in lifting weights, etc., cannot hold his master liable, as he himself must be the judge of his own strength; and this is so although the work is attempted at the immediate direction of the master. Even in such cases the servant is deemed to have assumed the risk. This rule was applied in *Stenvog v. Minnesota Transfer R. Co.* 108 Minn. 199, 121 N. W. 903, holding that a servant directed to assist in loading heavy rails onto a car, and who is told to go on, after complaining that the work is too heavy for him, is not entitled to recover, where he sprained his back as he was lifting one of the heavy rails, since he was the best judge of his own lifting capacity, and the risk is upon him not to overtax himself. The earlier cases dealing with this subject are collated in a note which accompanies the *Stenvog Case*, in 25 L.R.A.(N.S.) 362.

It is also a rule generally followed that where a servant is engaged in a work which necessarily results in causing chips of iron or other material to fly off, or which creates dust which is liable to fly around, he, if a man of ordinary intelligence and mature years, assumes the risk of danger from such chips or dust, and the master owes him no duty to warn him of what is necessarily an obvious danger. This principle is illustrated by the recent Washington case of *Nordstrom v. Spokane & I. E. R. Co.* 104 Pac. 809, holding that a lineman on an electric railway assumes the risk of injury from iron dust falling into his eyes from lugs on poles which he is required to cut with a hack saw. This decision is accompanied in 25 L.R.A.(N.S.) 364, by a note which sets forth the case law pertaining to the subject.

Exceptions to rule as to safe place. The general rule that a master must exercise reasonable care to furnish a safe place for his servant is not of universal application, but is modified by a number of well-defined ex-

ceptions. One of these exceptions is where the employment of the servant is for the very purpose of making the place safe, and is illustrated by the case of *Neagle v. Syracuse B. & N. Y. R. Co.* 185 N. Y. 270, 77 N. E. 1064, 25 L.R.A. (N.S.) 321, holding that a rule requiring a master to furnish a safe working place for his employee does not apply in favor of a fireman on a locomotive engaged in propelling a plow to remove snow from the track, so as to render the master liable for an injury caused by the overturning of the locomotive because of solid ice which other servants knew to be under the snow. And a similar case is that of *Graham v. Detroit G. H. & M. R. Co.* 151 Mich. 629, 115 N. W. 993, 25 L.R.A.(N.S.) 326, in which it is laid down that a railroad company performs its duty to employees sent to repair a washout, if it makes proper effort to acquaint them with known conditions of unsafety, although the information does not, in fact, reach them because of the negligence of the servant to whose care the message was intrusted, which due care on the part of the master would not have prevented or discovered.

Another exception to this general rule arises where the servant is employed to repair a dangerous or defective appliance. This exception is based upon the ground that it would be unreasonable, if not impossible, to require the master to furnish a safe appliance for the servant to work upon, when the very purpose of the employment is to make the dangerous appliance safe. The same general principles apparently apply to making a dangerous appliance safe as apply to making a dangerous place safe. This class of cases is illustrated by *Reed v. Moore*, 82 C. C. A. 434, 153 Fed. 358, 25 L.R.A.(N.S.) 331, holding that an employee who undertakes to repair an elevator known to be out of repair and unsafe assumes the risk of injury from such unsafe condition.

Nor is the rule which requires the master to furnish reasonably safe and suitable machinery, tools, appliances, and premises to the employee applicable to cars and engines being moved to the repair shops for the purpose of rendering them safe and suitable. This doctrine is

applied in *Southern R. Co. v. Lyons*, 95 C. C. A. 55, 169 Fed. 557, 25 L.R.A. (N.S.) 335, holding that an experienced railroad employee placed in charge of a wrecked engine which is being removed to the shops for repairs, and from which the cab and hand holds which were attached thereto are removed, is charged with notice of such removal, and assumes the risk of danger incident to such mission.

The cases in which the foregoing exceptions to the general rule is discussed are collected in notes which accompany the L.R.A. report of the cases.

Materiality of false testimony as element of subornation of perjury. It has been repeatedly held that the testimony upon the procurement of which a charge of subornation of perjury is based must be material to the issue. The recent case of *People v. Teal*, 196 N. Y. 372, 89 N. E. 1086, 25 L.R.A.(N.S.) 120, is in line with the earlier cases, and holds that one cannot be convicted of attempted subornation of perjury for attempting to secure false testimony which is so immaterial to the issue that the witness should not have been convicted of perjury had he given the testimony in the action. There is, however, a dissenting opinion concurred in by three judges, who do not deny that, so far as subornation of perjury is concerned, the materiality of the testimony is essential; but the minority dissent from the view taken in the prevailing opinion, that the testimony in question was immaterial.

Employer's liability for murder of paymaster by assailants. An unusual case recently arose under the workingmen's compensation act in England. On March 18 last, says the *New York Sun*, Mr. John Innes Nisbet was murdered in a train on the Northwestern railroad between Newcastle and Alnmouth. He was in the service of the Stobswood colliery, and at the time of his death was carrying money to the colliery to pay the miners their wages. His possession of this money was the inducement which led his

assailants to kill him. Mrs. Nisbet, the widow, sued the owners of the colliery for compensation for her husband's death, under the statute, and the judge of the county court at Newcastle-on-Tyne awarded her damages in the sum of £300.

It should be observed that here was no element of wrongdoing or negligence on the part of the employers. They had not done anything which they ought not to have done, or left undone anything which they ought to have done. The fatal misfortune of their paymaster was due simply and solely to the position which he occupied. It was as though a sentry should be killed while on guard, to plunder the post he was guarding. The court of appeal in England has just affirmed the judgment.

The workmen's act contemplates compensation by the employer to the employee, or in case of death to those dependent upon him, where "in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman." The qualifying words "by accident" are quite important. The court of appeal holds that a murder is an accident, within the meaning of the statute. This is in accordance with previous decisions as to the sense in which the word is used in this particular enactment. Thus Lord Justice Lindley has said: "Accident is not a technical legal term with a clearly defined meaning. Speaking generally with reference to legal liabilities, an accident means an unexpected and unintended occurrence which produces hurt or loss."

And Lord Macnaghten has declared that the expression is employed "as denoting an unlooked for mishap or an untoward event which is not expected or designed." This means not expected or designed by the victim. Of course the person who murdered Mr. John Innes Nisbet, the colliery paymaster in this New-

castle case, intended to kill him, but the homicide was none the less an accident to the murdered man, in the view of the law which has been taken by the court of appeal.

Title of one taking money from thief or embezzler. It may be safely said that the great weight of authority supports the

general proposition that only bad faith on the part of a third person receiving stolen money, or failure on his part to pay a valuable consideration therefor, will defeat his title thereto as against the true owner. It is so held in *First Nat. Bank v. Gilbert*, 123 La. 846, 49 So. 593, which is accompanied in 25 L.R.A. (N.S.) 631, by a case note discussing the considerable number of authorities dealing with the question.

Title of owner of chattel as against vendee or creditor of possessor. Does the owner of a chattel run the risk of losing it by parting with possession?

Has the mere holder of such property such ostensible ownership that third persons may deal safely with him on the strength of the apparent title? These questions, in effect, are answered in the affirmative in *Davis v. First Nat. Bank*, 6 Ind. Terr. 124, 89 S. W. 1015, 25 L.R.A. (N.S.) 760, holding that one who, pending a negotiation for a lease, places personal property which is to be the consideration for it in the possession of the other party, and permits him to use it as his own for a year, is estopped to assert title against one who, without notice, has taken a mortgage upon the property as that of the one in possession. No shadow of support is to be found in other jurisdictions for the rule adopted by the Indian territory court, as appears by the exhaustive subject note which accompanies the L.R.A. report of the case.

New or Proposed Legislation

A glance at the labors of our lawmakers.

Federal Aid in Mine Disasters.—It must be apparent to the most careless reader that mine disasters, instead of occurring less often, are becoming more numerous.

The fact is forced on thinking people that those who are directly or indirectly responsible for the lives of the men who work below the surface of the earth are doing nothing that is effectual in lessening the dangers of mining coal. The only advance which has been noted of late is a new outfit for exploring mines after a disaster has occurred. This is the oxygen helmet.

In view of this fact, Senator Dick's bill to increase the number of mine-rescue stations seems to be meritorious. There are four of these stations now established, situated at Pittsburg, Knoxville, Tennessee, Urbana, Illinois, and Seattle. Their establishment was one feature of the experimental work undertaken at small expense by the Geological Survey. At these stations the oxygen helmet and other life-saving devices were tested, and miners of the vicinity instructed in their use. The volunteers thus trained constituted an emergency force available for service even at considerable distances from the stations. There are too few stations, however, and, according to a report from the Secretary of the Interior, the loss of life in the Cherry disaster would have been much less had there been a properly equipped emergency camp closer to the scene. The Dick bill would increase the number of stations from four to twelve, at an additional cost of about \$150,000 a year.

This surely is a modest sum, says the Philadelphia Record, to pay for humanity's sake, and the possibility that thereby several hundred lives could be saved annually should justify the outlay even to the most hard-fisted utilitarian. The objection that the establishment of these rescue stations and emergency camps would be an invasion of Federal authority into the domain of the states is trivial. Mine regulation, to be sure, is part of the police power of the states; and possibly

a mine operator could not be compelled to accept the aid of a disciplined Federal rescue corps if disaster should befall in his diggings. A refusal in such a case, however, would be unthinkable. A person whose house is on fire will not drive away a fire company because it belongs to another village or because it is a volunteer organization. Stricken San Francisco did not reject the aid of the Red Cross society because it was organized under a Federal charter. Shipwrecked mariners of any nationality are afforded and accept help from the life-saving corps of their own or any foreign coast. German miners not long ago crossed the border to help rescue Frenchmen entombed as the result of a frightful colliery explosion, and were received with enthusiasm.

Humanity acknowledges no frontiers. Least of all should the division between state and Federal authority be a barrier to good works.

Creating Judges Who Are Specialists.—Students of political economy, says the Grand Rapids Herald, will find rare food for thought in the development during the past few months of special judicial tribunals to deal with special technical branches of jurisprudence. President Taft, himself a lawyer and jurist of high standing and constructive thought, has led in this movement. It may be prophetic of an ultimate radical change in our court procedure generally. If the experiments now under trial prove the virtue of the principle underlying their creation, American legal thought, and particularly the President himself, may have credit for leading the world in the formation of a more practical mode of court procedure, a more practical, economical, and equitable dispensation of justice.

We refer to the creation by the present Congress of a customs court and a commerce court. Here are two permanent benches which will deal with legal problems of a distinctly technical charac-

ter,—problems which heretofore have had to depend for adjudication upon jurists presiding over general sessions.

Now we are to have a special court, authorized to sit where occasion requires, which will pass upon all legal issues emanating from our tariff laws; and who will deny that a court which specializes in customs cases will not acquire an intimate technical familiarity with tariff problems which will permit of more equitable decisions,—decisions which go to the root of the right, decisions which can come with a sure speed and facility utterly impossible when rendered by judges whose information and training along these lines is only incidental.

We are to have a special court whose entire attention will concentrate on commercial issues growing out of our constantly multiplying commerce laws. These judges will become experts in their familiarity with law and precedent and proper interpretation of these statutes. The greatest justice which is humanly possible will characterize their decisions, because knowledge is power. Necessity of endless argument will disappear, because the court will know more law than the pleader. There will obviously be a despatch in the transaction of business which will defy expensive and exasperating delay. All these advantages, in a word, spell a more practical justice.

This is an age of specialization; in other words, an age of mastery. The "jack of all trades" wants for a job. The specialist is ever in demand. Why is not the President absolutely logical when he carries the application of this theory to the courts?

The court which heard a murder trial last week, a divorce case this week, and which will pass on a corporate accounting next week, will make honest and conscientious effort to do justice to all; and justice probably usually results. But no court can cope with specializing lawyers who appear in these divergent issues, and be as completely the master of the situation as though the judge himself were the greatest specialist of them all.

And so we shall watch this customs court and this commerce court with interest. In our judgment they mark a decided epoch in our development. We

prophesy a patent court and a postal court in the near future. If these be successful, there is no telling to what ends the revolution in legal procedure may go.

Abolition of the Original Jurisdiction of the Circuit Courts.—The chief feature of the bill introduced by Representative R. O. Moon, of Pennsylvania, as appears by the report submitted by him from the committee of the revision of laws, and that in which it most materially differs from existing law is found in the fact that it confers all the original jurisdiction cognizable in courts of first instance, on the district court of the United States, thereby eliminating entirely the original jurisdiction of the circuit court, the effect of which is to confine the duties of the circuit court judges chiefly to their appellate work in the circuit court of appeals.

One of the first acts of the first Congress, in 1789, was the completion of a judicial system by adding to the appellate court created by the Constitution courts of original jurisdiction in which all cases that might arise under the Constitution of the United States, the acts of Congress, and the treaties made pursuant thereto, should be cognizable. The plan devised and adopted was to create the district as the unit of this judicial system, and to proceed to divide the territory of the country into districts and appoint in each district a judge who should be known as the district judge, and to confer upon the district court so created original jurisdiction. This plan then further provided that the districts previously created should be divided into three circuits, to be called the eastern, middle, and southern circuits, and established therein a court to be called a circuit court, which should consist of any two judges of the Supreme Court and the district judge of such district, to which said circuit court original jurisdiction was given, exclusive in certain classes of cases, and in certain classes of cases concurrent with the district court; and, in addition to its original jurisdiction, an appellate jurisdiction was given over all final judgments or decrees of the district court where the matter in controversy exceeded in amount \$50.

The Supreme Court of the United

States upon its organization was a court without a docket and without a record. Its original jurisdiction was extremely limited, and of appellate cases it had none; and in the first ten years of its existence it had before it for argument and decision on appeals only ten cases; and the chief work of its justices was therefore done in the circuit courts, in the exercise of the original jurisdiction conferred upon these courts.

The growth of business in the Supreme Court of the United States is one of the phenomena of judicial history. From a court without a single case in 1789, when its judges were almost wholly occupied in the trial of cases upon the circuits, it expanded until, in 1891, the pressure of business upon this court became so great that a suitor at its bar was compelled to wait for a period of five years to have his case reached; and the situation became so intolerable that on March 3d in that year a bill was passed by Congress creating a new court, to be known as the circuit court of appeals, to which final appellate jurisdiction was given in a large class of cases in order to relieve the Supreme Court of its superhuman labors, and to afford the litigants of the country an opportunity for the final adjudication of their rights. By this act nine new courts were created, one in each judicial circuit of the country. These courts, as their title indicated, were wholly appellate courts. Their jurisdiction was established by taking away all of the appellate jurisdiction vested in the circuit courts by the judiciary act of 1789, and by adding thereto a large part of the appellate jurisdiction previously vested in the Supreme Court. This legislature therefore changed absolutely the whole jurisdictional scheme of the circuit court, and devolved upon its judges the large, important, and rapidly increasing work of a new tribunal. Prior to this time the rapid growth of the appellate work of both the Supreme Court of the United States and the circuit courts had compelled Congress to relieve them in a large measure of their original jurisdiction.

The duty of the Supreme Court justices to sit in the circuit courts was reduced to the necessity of a formal visit once in two years, and the act of 1869 had relieved the circuit court judges largely from the necessity of sitting as trial judges by providing that a circuit court might be held by a district judge of the district sitting alone.

Since 1891, under the provisions of this act, the district court judges of the United States, in addition to the regular work in their districts, have exercised the power of circuit court judges in the trial and disposition of almost the entire circuit court docket throughout the country. The circuit courts of the United States, therefore, as they exist to-day, both in jurisdiction and in the personnel of the judges, are wholly different from the courts created by the judiciary act of 1789. They have no appellate jurisdiction. They are presided over not by a Supreme Court justice, but by a district judge. The labor of the circuit court judges is confined almost exclusively to work in the circuit court of appeals, and the rapid expansion of the work of that court will of necessity, in the course of a few years, eliminate him entirely as a factor in the performance of his duties as a judge of the circuit court. Yet, because under the existing laws certain exclusive original jurisdiction is given to the circuit courts, there is necessarily maintained in every district of the United States and in every division thereof, now seventy-eight in number, the complete machinery of a circuit court, consisting of court rooms, clerks, dockets, marshals, and all of the extensive and expensive features of a court organization. The commingled jurisdiction between it and the district courts is perplexing, and oftentimes confusing to litigants and attorneys. Its exclusive jurisdiction is not based upon any organic principle of distinction, and there exists no longer any reason, either in theory or practice, why the original jurisdiction of the court should be maintained.

Bar Associations

What the Bar Associations are doing and saying.

September Bar Association Meetings

The Tennessee Bar Association meets at Chattanooga on August 29th, 30th, 31st, and September 1st and 2d. The meeting will be held in conjunction with the American Bar Association, which convenes at the same time and place.

The Bar Association of New Mexico will meet at Los Vegas during the month of September, on a date which has not been determined at this writing.

Alabama Bar Association

The Alabama Bar Association, in the closing session of its thirty-third annual convention, elected John London, of Birmingham, as its new president. Hon. Emmet O'Neal, Democratic nominee for governor of Alabama, is the retiring president. Lawrence Cooper, of Huntsville; W. P. Acker, of Anniston; Thomas M. Stevens, of Mobile; B. B. Bridges and C. B. Verner, of Tuscaloosa, were named vice presidents, and Alexander Troy, of Montgomery, was re-elected secretary and treasurer.

By a unanimous vote a committee was appointed to draft a measure providing for the establishment of an intermediate court of appeals to relieve the supreme court of certain duties, this body to report at a special meeting of the Bar Association, to be called prior to the next session of the legislature.

Old Common Law as Trust Remedy

Frederick J. Stimson, of Boston, spoke before the Bar Association of Indiana on "The Law of Combined Action or Possession."

The point of his address was that the law of combination, combined action of ownership, is, and is going to be, the most important branch of common law for the next generation, and it is also the very oldest English common law that we have. He said in substance:

"The same questions came up in early England in the thirteenth, fourteenth, and

fifteenth centuries precisely that we are having to-day in this country. It is the English common law which grew from the customs of the people, and not from statute, and developed a theory of what law should be applied to combinations of persons which is peculiar to English common law, and has been the admiration of continental jurists ever since they became acquainted with it; notably with Napoleon, who boldly took it over into his Code Civile.

"And the great beauty and profundity of that law was that it recognized the great power of combination either of individuals or of capital, and it applied a higher standard of moral duty to combined action than it was possible for the law to apply to the action of an individual which must lie within his own conscience. It was recognized in very early England that a combination to ruin a man, although no criminal act is done, is a highly criminal offense. Take, for instance, that I may refuse to trade with a baker in my town. I have a right not to trade with him, but if I call a meeting of all the individuals in that town and get them to combine and agree not to trade with that baker, we are going to ruin that baker absolutely.

"Therefore, this old law of conspiracy recognized that not only was combined action or possession for a criminal purpose unlawful, but it was equally unlawful when it had a purpose merely immoral, such as the injury of a third party or of the people in general, as in the case of our trusts and combines in restraint of trade. That law was established in its perfection five hundred years ago in England, and all our anti-trust acts have really added nothing to it.

"But the law had been forgotten, and the only real reason for passing our anti-trust statutes was to remind people again of this common law; and in the case of the Sherman act it was necessary in order to apply these common-law principles to matters of interstate commerce, there being, in the absence of statute, no Federal common law.

"I should urge that this law be studied, —not forgotten, not repealed, but rather strengthened. It is the one great domain of our common law, outside of criminal law, which goes into the question of intention, of moral purpose; that is to say, I may combine in order to increase my own business, but not for the immediate purpose of injuring my neighbor or the people at large. I hold, therefore, that this great question of conspiracy,—the law of combination,—whether of properties or of persons, is to be determined by the first intent of the combination.

"In my opinion, no jury will ever have any difficulty in determining that intent. That is precisely what juries are for; for as they have to do it in all cases of criminal law, so they can do it in this. The very trouble with the Sherman act—what I suspect is perplexing our Supreme Court to-day—is that they are asked to determine questions of fact, for instance the primal intention of the Standard Oil combination, without the assistance of a jury. It is not the effect, the result, nor is it a criminal or unlawful act actually committed that has any bearing, except merely as evidence; and this had been repeatedly decided by our Supreme Court and others. The combination may be a much higher crime, a much more dangerous thing than even a criminal act committed under it.

"In short, our ancestors had the intelligence to learn in life the dangerous power of association, and have recognized it in this law. It is a common complaint of the laymen that the law does not recognize the higher justice, the higher domain of morality, one's duty to one's neighbor. Now this is not the great evil of our common law, which does do that. It seeks to apply the Golden Rule, which looks into your motive, both as respects your neighbor and the state or the people at large.

"It is applied with equal impartiality to boycotts, combinations of individuals, and to blacklists, trusts, or combinations in restraint of trade to put up prices or to carry on unfair competition, which are combinations of capital.

"Of late, certain statutes have been proposed by, as it seems to me, more or less superficial reformers, who wish to

do away with all this English-American law of combination. One great body of our common law, I repeat, is based on the Golden Rule, and I am here to urge that it be not given up.

"The whole point is that this law was forgotten for centuries, and suddenly the old emergency sprang up again,—the same combinations of individuals as in the old trade guilds in England, and of capital as in the old cases of monopoly.

"It seems to me they took our bench and bar by surprise, those things which had not been remembered or studied for centuries. The law of England seemed to have been so fully established that it was forgotten, and, in their haste to meet the evil, our legislatures, state and national, passed a crude legislation, which so far as it embodied the common law was good and has lasted, but when it went beyond the common law was apt to be absurd or unconstitutional. It is the duty of the bench and bar to reinform themselves on this most important matter, and not think that it is a hopeless evil, which has been both met and surmounted in the past history of our great civilization."

Employers' Liability Law

Edgar A. Bancroft, president of the Illinois State Bar Association, in speaking on the subject of employers' liability, declared that the chief importance of such legislation did not lie in the legal questions involved, nor in a sure recompense for injured workmen. "It lies," he said, "in the fact that if a plan is found for insuring every workman against loss through accidents in his employment, it will not only end the personal-injury disputes between employer and employee, and relieve the courts of a very large burden, but it will also preserve the independence of the men and their families, and at the same time remove entirely the wasteful anti-social influence of such strife, and unite, as they should be united, the employer and the employees in a common interest and purpose."

President John T. Dye, in his address before the Indiana State Bar Association, called special attention to the em-

ployers' liability act. "The law which has been adopted on the continent of Europe and in England," he said, "provides a plan by which employees in dangerous employments, and in some cases in all employments, shall be paid a sum fixed in a schedule for personal injuries received by them in the course of their employment, with or without the negligence of the employer, when the injury is not the result of their wilful act or gross negligence. In some cases the law is made compulsory; in others optional.

"Lawyers will agree that such a plan, when compulsory, would be in violation of the Constitution of Indiana. It takes the property of the employer when he is not in fault and gives it to the employee, without due process of law. It deprives both employer and employee of the right to trial by jury in cases where such right existed at the time the Constitution of Indiana was adopted. It deprives both employer and employee of their freedom of contract. But if it should be deemed wise to recommend the optional law, leaving open to the employee his right of action in cases of negligence, a plan for insurance by corporation, under control and direction of the state and limited to the insurance of injuries to employees, might be devised which might be inviting to both parties. . . . Such a company should be managed by insurance commissioners appointed by the state, so as to insure the fair and impartial administration of the business, and gain and hold the confidence of the employees. This would open to both employer and employee the freedom of contract, which is a shield and defense, and both could have the right of trial by jury and due process of law.

"An employer of workmen can now buy accident insurance for a premium. Being thus indemnified from all damages naturally lessens his anxiety and care to prevent accidents, for where there is no loss there will be no great care. And reliable statistics show that only about 36 per cent of the sums paid for accident insurance reach the injured. There are no reliable data showing what proportion of the injured are compensated where the employer does not hold accident insurance."

Cost of Impairment of Usefulness of Individual

Probably no action involving more far-reaching consequences was ever taken by the Pennsylvania Bar Association than that evidenced by the resolution, indorsed by the leading judges and lawyers of the state, and which was adopted at the recent session, calling upon the next legislature to authorize the appointment of a commission to inquire into the laws governing the liability of employers for industrial accidents.

"Appalling in its injustice" is the fit phrase applied by those conservative men of the law to our present system of dealing with industrial accidents and resulting claims for damages by crippled employees. "Simple human justice" is what they declare an equitable employers' liability law.

The admirable committee report, calling for a fair and businesslike compulsory employers' liability law, by means of which one European country alone estimates that it saves annually \$250,000 in the efficiency of the German workmen and the increased product and profits of the German employers, contains this comment: "Out of the enormous number of industrial accidents in Pennsylvania happening every year, only a small number entitle the employee to a recovery under the present law. The proportion is not more than 25 per cent. Some authorities would place it as low as 10 per cent. The remainder are due to 'the ordinary risk of the business,' and the burden of them is borne by the employees themselves. The financial burden, which ought to fall upon the industry, is placed upon the employees. They cannot bear it, and the result is untold suffering, and, in many cases, pauperism."

The recognition of the sound principle that the cost of impairment of the usefulness and productivity of the individual should be counted a fixed charge upon the person or corporation that, in the course of profit making, caused that individual to become impotent as a worker and more or less a charge upon the public, carries a meaning deeper than appears upon the surface.

From Judge Endlich, in that same meeting of the Pennsylvania bar, came

these impressive words. "Our commonwealth should be in a position to rid itself of the reproach that, while annually taking enormous sums from the licensing of the liquor traffic, it has thus far been unable to supply the means and suitable institutions for the care of the victims of that traffic before they have reached the stage of positive dementia.

"Whatever may be our several views concerning the legitimacy and necessity of the business, we must all agree that to many of our brethren in every walk of life their weakness makes the opportunities held out to them irresistible allurements to self-destruction, and that, in so far as these unfortunates can be restored to health and usefulness or kept out of further harm's way, the state is bound in ethics and humanity to apply to that purpose, ahead of every other, the revenue derived by it from that source."

Aside from all differences of opinion concerning license, local option, or prohibition, says the Philadelphia North American, this is the plain truth of business justice. Students of civics and medicine alike have concluded that penal treatment of the inebriate is irrational and costly folly. Drunkenness is a disease. And it must be recognized and combatted as is tuberculosis, as a curable physical weakness that, left uncured, entails enormous harm not only upon the individual, but upon the community, the nation, and the race.

The right of the doctrine of the employers' liability is universally conceded. The logic is unescapable that the maker of cripples and incompetents should be required to pay for the care or the cure of those maimed for his pecuniary profit.

No more than the mill-owner or the mine-owner should the brewer, the distiller, or the wholesale or retail liquor dealer be permitted to cast upon the community the men he—with or without intent, matters not—made useless in the process of his enrichment.

Admiralty Law Reform

George Whitelocke, of Baltimore, opened a joint session of the Maryland and Virginia Bar Association with a pa-

per on recently proposed reforms in admiralty law. He attacked the weakness of the common law of admiralty in regard to recovery for death caused by the negligence of ships at sea. There is no such recovery at law now. He urged that Congress should enact a statute covering such causes and remedying the present defects caused by the nonuniformity of the statutes of the states.

International Arbitral Courts

Former Governor A. J. Montague, of Virginia, delivered an address before the Maryland and Virginia Bar Associations on "The Development of Remedial International Law," in which he urged the creation of an international court of justice, analogous to the Supreme Court of the United States. He suggested that the blowing up of the Maine might have been adjudicated by such a court. Continuing, he voiced a strong plea for all international arbitral courts.

Advocates the Income Tax

At the annual meeting of the Missouri State Bar Association, Dean Henry Wade Rogers, of the Yale Law School, delivered an address on the proposed income-tax amendment of the Constitution of the United States. He advocated the ratification of the amendment.

The decision of the Supreme Court of the United States in the case of *Pollock v. Farmers' Loan & Trust Company* made it essential, he said, to amend the Constitution in order that the national government be able to command the national resources of the country in times of crisis.

Mr. Rogers took the same view that Senator Root entertains of the words, "from whatever source derived," as used in the text of the amendment now before the states, and stated that it was his conviction that the Supreme Court would construe these words as authorizing Congress to tax the instrumentalities of the states. He thought the states could not make a success of taxing incomes.

Law Schools

A department dedicated to the judges and lawyers of the future.

Baltimore Law School.

The catalogue of the Baltimore Law School for the year 1910-1911 announces that the fall term will begin September 19, and the school will close May 23.

For the convenience of those engaged in business and in office work the lectures will be held in the morning, beginning at 7 o'clock.

The school was organized in 1900, and for a number of years was at the southeast corner of St. Paul and Saratoga streets. In 1904 it became affiliated with the Baltimore Medical College. Since 1908 the school has been at the new laboratory building of the Medical College, 849 North Howard Street.

Judge Alfred S. Niles is dean of the school.

New Dean at University of Michigan.

Professor Henry M. Bates, who has been appointed dean of the Department of Law at the University of Michigan, is the fifth dean of this great Law School since it was established fifty years ago.

The new dean is forty-one years old. He was graduated in the '90 literary class of the University, and then took the law course. When he finished his studies he located in Chicago, where he was for a period Secretary of the Chicago Bar Library Association. Seven years ago he returned to Ann Arbor and joined the faculty of the Law School. Last spring he resigned and entered a law firm in Detroit, of which Frank E. Robson, now general attorney for the Michigan Central, is senior member.

He did not, however, surrender his residence in Ann Arbor, and he continued his duties as professor to the end of the University year.

National University Law School.

Practically the only change contemplated in the faculty for the ensuing term is the appointment of Hon. Job Barnard, associate justice of the supreme court of the District of Columbia, to the chair

of equity jurisprudence. Hon. James Schouler, the eminent text-book writer and jurist, retires from the faculty at the close of the University year, after a service of over twenty years.

Western Reserve University.

The trustees of Western Reserve University have voted that, beginning with the academic year 1911-1912, only graduates of the colleges of approved standing may be admitted as regular students in the Law School. The change in requirements will not affect those who enter in September, 1910.

Professor Evan Henry Hopkins, since 1892 an officer of the Law School, desiring to devote his entire time to the practice of law, presented his resignation as dean and as a member of the faculty. Professor Walter Thomas Dunmore was appointed dean. Professor Dunmore will enter upon his duties as dean this fall.

Proposed Law School in St. Joseph.

Action looking to the establishment of a law school in St. Joseph, Missouri, was taken recently by a mass meeting of the local bar. All were enthusiastic over the outlook for such an institution, and pledged support to the movement. It is planned to make it a night school, similar to those in Kansas City and St. Louis, and to organize a faculty from the local bar.

"The plan is to establish it on the lines of the Kansas City Law School, which was organized in 1895, and now has an enrolment of over 200 students," said a member of the committee. "We believe we can carry on a full course of study here, and that St. Joseph and the territory adjacent to St. Joseph will support a law school as easily and as successfully as it now supports a medical school.

"The law of this state regarding admission to the bar precludes the young man who is not a graduate of a law school. Yet the only law schools now in the state are these at St. Louis, Columbia, and Kansas City."

New Law Books

"Intoxicating Liquors."—By W. W. Woollen and W. W. Thornton. (The W. H. Anderson Company, Cincinnati) Buckram. 2 vols. \$13.50.

This work is not only a treatise upon the traffic in and control of the manufacture and sale of intoxicating liquors, but it also deals with a number of related subjects and in so doing includes a broader field than has heretofore been embraced in works upon this subject. Thus, the subject of drunkenness is examined at length and its effect upon contracts and wills, divorce, negligence, and life insurance is considered, as well as such phases of the question as drunkenness as a defense for the commission of crime and guardians for drunkards.

The two volumes of the work are based upon a study of some 27,000 cases, comprising the body of the case law upon the subject as laid down by the courts of the English-speaking world. The authors have cited all decisions reported in England, Ireland, Scotland, Quebec, Ontario, British Columbia, the British Northwest Territories, Nova Scotia, New Brunswick, Newfoundland, Australia, New Zealand, and in the British possessions of South Africa.

Considerable attention is paid to questions of practice, especially in the chapters on Civil Damages, Abatement and Injunction, Searches and Seizures, Indictment, Evidence, and Trial and Judgment.

A comprehensive work has been made possible by the multitude of decisions which have emanated from the courts during the last quarter of a century, and which would seem to have presented almost every question that could possibly be raised concerning the liquor traffic and its regulation. This treatise affords a ready reference to any particular question discussed in this vast body of case law.

"Actions by and against Corporations."—By Joseph Asbury Joyce. (The Banks Law Publishing Co., New York) Buckram. \$6.50.

In this work the author has considered

fully the principles upon which actions by and against corporations are based, especially those constitutional principles which are the foundation of corporate actions and defenses, and which are usually the first questions involved in actions in which corporations are parties. The right of action and defenses in matters relating to the supervision and control of corporations by supervisory commissions has also been fully considered. The treatment of these subjects and underlying principles is followed by a discussion of the jurisdiction of courts, not only over corporations, but also over corporate supervisory bodies and the jurisdiction or powers of such bodies; the removal of suits; parties, including stockholders' rights and liabilities; and the various actions at law and in equity, including penalties, and criminal offenses, in which questions concerning corporations have been involved.

The book bears evidence of careful workmanship, and ably presents the learning upon a question of great and growing importance.

"The Law Relating to the Rule of the Road at Sea."—By David Wright Smith, M. A., B. L. Solicitor, Glasgow. (James Brown & Son, Glasgow) 7/1.

The object of this book is to explain the law relating to the Collision Regulations, as laid down in the decisions of the courts, in such a way as to be of service at sea. Extracts from the leading judgments in many of the cases, as well as the facts on which the cases have been decided, are given, so far as necessary to illustrate the points dealt with in the text. A table of the reports in which the cases are to be found is given. The intention of the framers of the Regulations in regard to the effect of the various Articles, as far as it may be gathered from the published Protocols of the Washington Conference, has also been noted where necessary. References to the Protocols and to the numerous Parliamentary and official publications on the subject will be found in the footnotes.

Some practical matters closely connect-

ed with the Regulations, without which a knowledge of the working of some of the Rules is impossible, are also dealt with, a number of points being illustrated with diagrams for the sake of clearness.

The work well deserves the attention of every practitioner in admiralty.

Loveland on "Bankruptcy." 4th ed. 2 vols. Sheep or Buckram, \$12.

"Bar Examination Review." By Albert H. Putney. 1 vol. Buckram, \$4.

"The Federal Penal Code." In force January 1, 1910. Annotated by George F. Tucker and Charles W. Blood. 1 vol. Law Canvas, \$5.

"Consolidated Index to Remington and Balinger's Annotated Codes and Statutes of Washington." 1 vol, \$2.

"New Consolidated Index to the Codes and General Laws of California." 1 vol. \$6.40 net.

"The Visigothic Code (Forum Judicum)." Translated from the original Latin and edited by S. P. Scott. 1 vol. Buckram, \$5.

"Incorporation, Organization, and Management of General Business Corporations in Illinois." By William Meade Fletcher. 1 vol. Buckram, \$7.50.

"1910 Supplement to Green's California Digest." By James A. Ballentine. Covering cases in vols. 148-154 California Reports; vols. 2-9 California Appellate Reports; vols. 1-5 Coffey's Probate Decisions; and the California decisions in vols. 89-99 Pacific Reporter. 1 vol. Buckram, \$8.50.

"Digest of volumes 61-80, Inclusive, South Carolina Reports." By C. J. Ramage. 1 vol. \$7.50.

"International Law." Hornbook Series. By George Grafton Wilson. 1 vol. Buckram, \$3.75.

"A Treatise on Code Pleading and Practice." Adapted to Practice in California, Alaska, Arizona, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Other Code States. By William A. Sutherland. 4 vols. Buckram, \$26.

"Standard Encyclopædia of Procedure." Arthur P. Will, editor-in-chief; James DeWitt Andrews and Edgar W. Camp, supervising editors. In 18 vols. One volume every three months. \$6 per vol.

"Georgia Words and Phrases." By Dean E. Ryman. 1 vol. Buckram, \$6.



Recent Articles in Law Journals and Reviews

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"The Air—A Realm of Law."—14 Law Notes, 69.

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"An Ambiguity in the Negotiable Instruments Law."—23 Harvard Law Review, 603.

"The Negotiable Instruments Law."—27 Banking Law Journal, 403.

Contracts.

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Corpus Juris.

"An American Corpus Juris."—22 Green Bag, 428.

Courts.

"Powers of Courts in Vacation."—17 Case and Comment, 107.

"Log Cabin Courts of Long Ago."—17 Case and Comment, 114.

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"An Accusation of a Prisoner by a Person Not Called as a Witness."—74 Justice of the Peace, 315, 326.

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"Pavement Lights and Gratings."—74 Justice of the Peace, 314.

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"A Study of the Growth and Development of Hindu Law."—20 Madras Law Journal, 175.

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"Government by Injunction—the Misuse of the Equity Power."—71 Central Law Journal, 5.

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"Publication to Stenographer in Libel."—10 The Brief, 87.

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"Remedies of Mortgagor and Mortgagee When the Same Person Holds Two Mortgages over the Same Property."—20 Madras Law Journal, 168.

Municipal Corporations.

"Extension of Borough Boundaries and Financial Adjustments."—74 Justice of the Peace, 338.

"The Supply of Electric Fittings by Municipal Corporations."—74 Justice of the Peace, 350.

Negligence.

"The Supply of Dangerous Articles."—42 Chicago Legal News, 411.

Philippines.

"Law in the Philippines."—10 The Brief, 77.

Principal and Agent.

"The Liability of an Undisclosed Principal. II."—23 Harvard Law Review, 590.

Public Service Corporation.

"Illegality as an Excuse for Refusal of Public Service."—23 Harvard Law Review, 577.

Schools.

"The Liability for Accidents to School Children."—74 Justice of the Peace, 338.

"The Liability for Accidents to School Children under English Law."—42 Chicago Legal News, 412.

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"The Constitutionality of the Federal Corporation Tax."—40 National Corporation Reporter, 798.

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"Directing Verdicts."—16 Virginia Law Register, 241.

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"Remittitur in Verdicts, Where Excess is Not Exactly Calculable."—70 Central Law Journal, 438.

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"Precatory Trusts."—31 Australian Law Times, 93.

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"Life and Character of William T. Wallace."—22 Green Bag, 379.

Waters.

"Irrigation—Owner of a Prior Right to Water for Direct Application, Privileged to Store Same for Future Use."—71 Central Law Journal, 58.

Wills.

"Probate of Will without Attestation Clause Where Witnesses are Dead or Absent."—22 Bench and Bar, 19.

The older civilizations failed because they meant only the uplift of the few, but our institutions are conceived in a nobler spirit and work to a higher end. Side by side, hand in hand, helpful to each other, have gone our marvelous material development and the increasing humanity of our laws.—Frederick W. Lehmann.

Quaint and Curious

Odd legal incidents gleaned from modern chronicles.

A Sartorial Reason.—Apropos the late Edmund Baxter's experience in the United States Supreme Court, regarding the appearance of attorneys before that bar only in Prince Alberts, recited in the August CASE AND COMMENT.

Jones, attorney, and Smith, ditto, at one time left their respective towns in the middle West and traveled to Washington to argue *Doe v. Roe* before the Supreme Court. Jones, representing Doe, was familiar with the rule referred to, while Smith was not, and, as a result, the latter appeared in simple sack suit. At the conclusion of the arguments and as the two attorneys were on their way to the hotel, Jones informed Smith of the breach he had committed, and Smith, of course, was much perturbed.

In due time, the attorneys received the decision, and Smith's client had lost the case. Smith thereupon finally penned the following to his client:

Dear Sir:—

I am to-day in receipt of the opinion in *Doe v. Roe*. With much regret, I have to advise that you have lost your case in the court of last resort. Under other circumstances, I should take the defeat as a matter of course, but, under the circumstances, I feel that I am, in a measure, to be blamed for the loss. They have a rule in the Supreme Court that any attorney appearing before it must wear a Prince Albert. I did not know of this rule until after the case had been argued, and then it was too late. Of course, the Supreme Court didn't give that as a reason for beating us, but it was a *d*— *sight better than any reason they did give*.

Yours truly,
Smith.

Novel Proof of Death.—Accompanying a beautiful casket inlaid with pearl, containing the heart of her husband, Count Julian de Ovies, former Chilean consul at Pittsburg, Pennsylvania, Countess de Ovies will soon journey to Madrid to deposit the heart as her sovereign proof

in claim of the Spanish estate of her dead husband.

The gruesome ritual is in accordance with the law of Spain, which provides that the heart of any member of the royal family dying abroad shall be preserved after identification by the government officials of the country wherein the death occurred, the physicians attending, and the Spanish consul in the country, and shall be forwarded to Madrid as proof of the death of the subject.

When delivered in Madrid the casket will be opened with impressive ceremonies in the presence of court dignitaries, and the widow, with her attorneys, will make formal demand to the Crown for the estate.

Her "Laughable Husban."—"I farbid you give Santford Tennant any divorce. He is my laughable husban. (Signed) Lucretia Tennant."

The above missive, addressed to the clerk of the "candy court," recently found its way to W. H. Coleman, clerk of the county court at Pittsburg, Pennsylvania. The divorce records were searched, but there was no evidence of any libel having been filed by "Santford Tennant." Lucretia's fears, apparently, were groundless.—Evening Star.

Better Say it Anonymously.—A man called up a judge on the 'phone, says the Cleveland Plain Dealer, and spoke disparagingly of his decisions. The judge said: "Who is this talking?" He asked it in a casual way, just as you'd ask it yourself, and the man frankly replied. When a man is mad he forgets diplomacy.

Instead of telling the judge that his name was Sylvester Jones, when it was really something else, he gave his right name, and asked the judge not to forget it.

The judge said he wouldn't.

A little later the man was under arrest, charged with contempt of court.

And when he apologizes it won't be over a 'phone.

The Strenuous Life Prohibited.—The Utah legislature has tremendous questions to deal with, and consequently one is not surprised to read in chapter 49, Session Laws 1909, the following: "Every person who maliciously and wilfully disturbs the peace or quiet of any neighborhood, family, or person by loud or unusual noises, or by discharging firearms, or by tremendous or offensive conduct, etc."

Town without Taxes.—Orson, a town in Sweden, says the Chicago Tribune, is probably the only municipality in the world which has ordinary city expenses, but which imposes no taxes. Moreover, the local railway is free to every citizen, and there is no charge for telephone service, schools, libraries, and the like. This happy state of affairs is due to the wisdom of a former generation of citizens and rulers of Orson, who planted trees on all available ground. During the last thirty years the town authorities have sold no less than \$5,000,000 worth of young trees and timber, and judicious replantings have provided for a similar income in the future.

Indiscreet Poll.—*Une Revue Juridique* of Breslau, so we read in a Paris newspaper, gives an account of a difficult question which was before the divorce court of Silesia. A husband sought divorce from his wife on the ground of unfaithfulness. He had no evidence in the ordinary sense, documentary or parol. His one and only witness was his parrot. The husband had been away for six weeks, and, when he returned, the parrot was constantly saying: "Arthur, my dear Arthur." Then in a louder tone: "My sweet; my heart, my loved one." The parrot was so persistent that the husband brought his petition, making a close friend, whose name was Arthur, the correspondent. The husband's counsel demanded the receivability of the parrot's evidence, but counsel for the wife maintained that only a person could be called as a witness. While the debate was in progress, the wife confessed, so the court was not called upon to give a ruling as to whether a parrot was or was not a competent witness.—The Law Times.

Reformed Procedure Unnecessary.—At a bar dinner forty or fifty years ago, writes E. W. McGraw, of the San Francisco Bar, the following toast was proposed and met with an enthusiastic reception:

"The Court of Cupid: A court where lawyers' pleas always please, where every suit is commenced by an attachment, where the execution takes the body, and supplementary proceedings never fail to satisfy the judgment."

Domestic Application of the Closure Rule.—An Indianapolis woman who used fly paper to close the mouth of her mother-in-law was recently fined \$10, but lost her mother-in-law as a member of the family. The latter admitted in court that she was a "very tedious old person," and told of the pasting of the fly paper across her mouth.

"Judge, I just could not stand it," explained the fair defendant. "She criticized my hair and my dress. I did use the fly paper, but she deserved it."

The wife has appealed to the higher courts to determine whether she is really censurable.

Dogs as Deputies.—"For the first time in the history of Missouri two hunting dogs have been regularly designated as deputies, and attached to the office of the state by Jesse A. Tolerton, the present commissioner. By an instrument bearing the seal of Missouri, he certifies that Lady and Queeny are regularly attached to the working force of his office, and requests that they be so recognized, and adequate opportunity be given them to do the work for which they are employed. These two new state employees are of the English setter variety, and their part of the work is to walk around and look wise where the game wardens suspect that game is secreted. Around railroad stations is where they are found most useful, and all that the deputy game warden has to do is to lead them through a pile of baggage, and when Lady or Queeny gives a knowing sniff, and comes to a halt with her nose indicating a clew, to follow this information, confiscate the baggage, and find the quail.—St. Louis Globe-Democrat.

Judges and Lawyers

A contemporary record of notable men

John G. Carlisle

One of the Greatest Intellects of the Age.

John Griffin Carlisle was born in Campbell (now Kenton) county, Kentucky, September 5, 1835. He was admitted to the bar in 1858. He served as a member of the Kentucky house of representatives from 1859 to 1861, and as a state senator from 1866 to 1871. In the latter year he was elected lieutenant governor of Kentucky, serving until 1875.

He entered upon a great parliamentary career in Washington in the forty-fifth Congress, when at a bound he slipped to the front, the leader of a majority side that included Randall, Morrison, Mills, Tucker, Stephens, Knott, Cox, Culbertson, and others. His maiden effort was on the Army bill, which contained a provision that soldiers of the United States Army should be employed as a police force at the polls in any election in the states.

He was chosen speaker of the Forty-eighth, Forty-ninth, and Fiftieth Congresses. He ranked with the greatest speakers,—Macon, Clay, and Stephenson, Blaine and Reed. As a presiding officer he was as great as the greatest, and his

mastery of parliamentary law surpassed that of all others. He knew the history of the rule and he saw the reason of the rule. There never has been a speaker more popular with members on both sides. The Republicans saw in him a

presiding officer as just as the judge on the bench who held the scale "right adjusted," and their admiration for him was as sincere and as enthusiastic as the Democrats felt and gave voice to. Only one of his decisions was questioned, and on an appeal there was but one vote cast to reverse it. Frye, of Maine, himself a capable and even a brilliant presiding officer, characterized Mr. Carlisle as "the jewel of the Democratic party."

While Mr. Carlisle gained great rank as a statesman, he was equal-

ly famous as a lawyer, and during his career he was on one side or the other of some of the most noted cases ever tried in this country. He became an international figure on the question of extradition. He was the first lawyer in this country to successfully contend that when the Federal government entered in-



JOHN G. CARLISLE

to an extradition treaty with a foreign government, a fugitive from justice brought into the country on process of extradition should be exempt from prosecution for an offense other than that with which he was charged, until a reasonable time and opportunity had been given for the return of the man to the country from which he was extradited.

His style of oratory was purely forensic. There was neither surplusage nor ornament; only and always simple law and logic, from an unflinching well of learning and a copious outpouring of crystal statement. Usually, when he had stated his case, his argument was made. Take the arguments of Carlisle and see how he scorned the superfluous word. See how he murdered the adjectives and the flower of speech. None of the great men with whom he contended before the Supreme Court of the United States were as laconic as he. No lawyer of modern times appeared before that Tribunal who commanded more attention than he did. When Mr. Carlisle rose to speak it was the habit of the court to bunch itself, as it were, and to listen with rapt interest and respect.

"I consider Mr. Carlisle," said Senator Bailey, of Texas, "perhaps the most intellectual man of the age. I do not confine this opinion to our country, but to the world. I may add, that if you had destroyed every law book, John G. Carlisle would have been able to replace it."

Honorable Samuel L. Gilmore, Representative in the Congress of the United States from the second district of the state of Louisiana, and an able lawyer, died at Abita Springs, where he had gone some weeks ago in the hope of restoring his health. As a young practitioner he was associated with such recognized legal lights as Hon. Carleton Hunt and the late John M. Baldwin.

He was nominated for city attorney on the Citizen's League ticket and elected to that office in 1896. He was successively re-elected to the same office in 1900, 1904, and 1908, serving thirteen years. On March 15, 1909, he resigned the office of city attorney and was elected without opposition to the Sixty-first Congress on March 30, 1909, to fill the va-

cancy caused by the death of the late Hon. Robert C. Davey, for the second district of Louisiana.

Judge George B. Lake died in Omaha, at the age of eighty-four. He was born at Greenfield, New York, September 15, 1826, and went to Nebraska in 1857. He had been educated at Oberlin College and read law in Elyria. He first practised law in Omaha, in partnership with A. J. Poppleton. Two years after coming to Omaha he was elected to the territorial legislature, and served there for three terms. He was speaker of the house in 1865, a member of the committee that drew up the Nebraska state Constitution, and was a member of the state supreme bench from 1871 to 1884.

On his return to Omaha his practice was with James W. Hamilton, and at a later time, Henry E. Maxwell was added to the firm. He was an active, although silent, member of the firm of Hamilton & Maxwell until very recently.

For a number of years, Judge Lake has been seen more frequently at the Vinton street ball park than at any other public place, and his enthusiastic support of the game, which was equaled only by the fan tendencies of the late Frank E. Moores, led to the custom of recognizing him from the field.

A few years ago every ball game that was played in Omaha was opened with this announcement by the umpire, "Is Mayor Moores here? Is Judge Lake here?—then play ball."

Lester O. Goddard, one of the best known railroad attorneys in the country and for forty years a resident of Chicago, died recently at his home in Riverside.

Coming to Chicago in 1870, he was admitted to the bar in 1883, and soon afterward became identified with the legal department of the Chicago, Burlington, & Quincy Railroad, from which he retired about seven years ago to become a partner in the firm of Kimball, Custer, & Goddard. He was at one time mentioned as a candidate for membership on the Interstate Commerce Commission.

Tennessee's Attorney General



HON. CHAS. T. CATES, JR.

Honorable Charles T. Cates, Jr., was appointed Attorney General of Tennessee on September 11, 1902. The official title of the office is Attorney General and Reporter, because, in addition to the ordinary and usual duties

of Attorney General of a state, the duty of reporting the decisions of the supreme court is imposed upon the office. In Tennessee, the Attorney General is appointed by the five judges of the supreme court, and the term of his office runs for eight years. The supreme court of Tennessee sits in the three grand divisions of the state,— at Knoxville, for East Tennessee; at Nashville, for Middle Tennessee; and at Jackson, for West Tennessee; and it is the duty of the Attorney General to look after and attend to all of the business of the state,—both civil and criminal—in the supreme court, and also in the various Federal courts, and the Supreme Court of the United States, at Washington.

As *ex-officio* reporter of the decisions of the supreme court of Tennessee, the subject of the sketch has published, since 1902, thirteen volumes of Tennessee Reports, known as "Cates' Reports, 1-13," or "Tennessee Reports, 110-121."

During Attorney General Cate's term of office many important cases, involving state revenue, boundary lines of the state, and the regulation of corporations, have been before the supreme court. One of the notable cases in which he appeared was that of the State of Tennessee v. Standard Oil Company of Kentucky, which resulted in a decree of ouster by the state supreme court against the Oil Company, which decree has been recently affirmed by the Supreme Court of the United States.

Another case of general interest, not only in the state, but throughout the Union, was that of Duncan B. and Robin Cooper for the murder of Senator Edward Ward Carmack. The case was brought prominently before the public a short time since, by the pardon, by Governor Patterson, of Duncan B. Cooper within a few minutes after the supreme court had affirmed his sentence of twenty years in the penitentiary for complicity in the murder.

W. S. Thurstin, one of the oldest and most respected citizens of Toledo, Ohio, passed away in his seventy-third year.

Mr. Thurstin was one of the best known attorneys in the state, and was the senior member of the law firm of Thurstin, Seney, & Thurstin, the other members being Wesley Thurstin, Jr., his son, and George E. Seney.

Mr. Thurstin was one of the first to rally to the support of the Union when Fort Sumter was fired upon. He joined the One Hundred and Eleventh Ohio, and with this regiment he served through the great war. He was in the battles before Atlanta and in the siege of that place, and also took part in the battles of Nashville, Franklin, Fort Anderson, Goldsboro, and Kenesaw Mountain. He was honorably discharged at the close of the war, with the rank of captain. He served as a member of the board of education and has held other municipal and quasi public offices. He leaves to his descendants a record made illustrious by service to his country, and made honorable by his dealings with men in the quieter paths of life.

Judge Charles Francis Stone of the superior court of New Hampshire died at his home in Laconia, New Hampshire, at the age of sixty-seven years. He served in the legislature in 1883-4 and in 1887-8, when he was conspicuous in the railway fight. In 1892 he was nominated for Congress, but was defeated. President Cleveland, in 1894, appointed him naval officer of the port of Boston, an office he held for four years. Judge Stone was well known throughout the state of New Hampshire as an upright jurist and as a public-spirited citizen.

Iowa's Attorney General



HON. H. W. BYERS

Honorable Howard Webster Byers, Attorney General, was born at Woodstock, Richland county, Wisconsin, December 25, 1856, of American parentage. He received

a common-school education; moved from Wisconsin with his parents to Hancock county, Iowa, in 1873; located in Shelby county, at Harlan, Iowa, in 1877, and has resided there ever since except three years at Earling, in the same county. He was a farm laborer from his fifteenth to his twentieth year, school teacher from twentieth to twenty-fifth year, clerk in general store from twenty-fifth to thirtieth year, law clerk from thirtieth to thirty-second year, and was admitted to the bar in 1888.

Mr. Byers was a member of the house in the twenty-fifth general assembly, speaker of the house during the twenty-sixth regular and extra sessions, and a member of the house during the twenty-eighth general assembly. He was elected Attorney General November 6, 1906, and re-elected in 1908.

"State laws were enforced in spots only," says a writer in the August number of Hampton's Magazine, "when Mr. Byers became Attorney General. In the interior, the statutes restricting the saloon and prohibiting immorality were very well obeyed; the people believed in them and elected officials who enforced them. But scattered up and down the two boundary rivers of the state were 'river cities' which defiantly disregarded all these laws. Here saloons ran as they pleased, prize fighting was tolerated, public gambling was licensed."

Mr. Byers "sent notices to local prosecuting attorneys that they must do their duty. Within a year, the liquor business of the river cities was transformed and immorality no longer flaunted itself boldly. To-day these cities are living up to the law as well as the interior cities."

Mr. Byers could have continued Attorney General indefinitely had he not preferred to run for Congress. He made the race at the recent primaries, and was defeated. But "as these Iowa insurgents play the game, it is not so important whether you win the first time, but it is important to keep fighting all the time. . . . That is the Byers' way."

Former Judge Craig Biddle of the court of common pleas, Philadelphia, died at his summer home at Andalusia, after a week's illness. He was eighty-seven years old. Judge Biddle had served on the bench for a large part of his life. He was four times elected, and served continuously until 1907, when he retired because of advancing years and was appointed prothonotary of the common pleas courts. Judge Biddle was in the state legislature in 1849, when the bill was introduced providing that the judges should be elected by the people, instead of appointed by the governor. He was instrumental in securing the passage of the measure, under the provisions of which he has been four times elected to office. Judge Biddle heard many noted cases. Probably none attracted more attention than the trial of Senator Quay, on the charge of defrauding the state.

He was graduated from Princeton College in 1841, receiving his A. M. and LL.D. degrees from that institution. Three years later he was admitted to the bar. In Civil War days he served as major on the staff of General Robert Patterson with the forces in the Shenandoah valley. Later he served on the staff of Governor Andrew G. Curtin, of Pennsylvania, organizing new regiments for service.

The Humorous Side

It is good to lengthen to the last a sunny mood.—Lowell.

Save Your Coupons.—The free coupon, receivable in part payment, has been adopted by an enterprising lawyer in the Southwest, who has issued the following circular:

————'s Law Offices
———— Street
Up First Stairway South of ——— Dry
Goods Store
'Phone No. ———
—Announcement—

The Law Partnership of C & O has been dissolved. Mr. C retiring. Mr. O will continue the business at the above address, first stairway south of the ——— Dry Goods Store. He will do a general Law Practice. Save the \$2.50 Coupon attached hereto, as it will be valuable should you want some Law work done.

Notary Public in Office.

.....
: \$2.50 :
: This Coupon entitles the holder :
: to a credit of \$2.50 on fee for any :
: Legal Service when presented at :
: office. :
: No person can present more :
: than one coupon. No charge for :
: advice. :
:
:

Making Haste by Stopping.—At the last term of an Arkansas circuit court a case was proceeding slowly, and the judge was plainly worried. One of the attorneys suggested to the court that he thought he could save some time if permitted to talk to one of his witnesses for a minute. "All right," was the reply, "if you can make any time by stopping, go ahead."

The Way the Box Looks to the Bench.—A new trial is asked in Cincinnati because the judge smiled at the jury. There are juries in Cincinnati and elsewhere whose appearance would excuse a judge for haw-hawing right out.—Cleveland Plain Dealer.

An Innocent Bystander.—Uncle Mose, needing money, sold his pig to a wealthy Northern lawyer who had just bought the neighboring plantation. After a time, needing more money, he stole the pig and resold it, this time to a Judge Pickens, who lived "down the road a piece." Soon afterward the two gentlemen met, and, upon comparing notes, suspected what had happened. They confronted Uncle Mose. The old darkey cheerfully admitted his guilt. "Well," demanded Judge Pickens, "what are you going to do about it?" "Blessed ef I know, jedge," replied Uncle Mose, with a broad grin. "I'se no lawyer. I reckon I'll have to let yo' two gen'men settle it between yo'selves."—Everybody's.

The Excellence of Simplicity.—"It's a lucky thing foh de human race," said Uncle Eben, "dat de Ten Commandments wasn't loaded down wif phraseology like de laws de legislature passes."—Wash. Star.

A Monopoly of Water.—A Scottish gamekeeper found a boy fishing in his master's private waters, says an exchange. "You musn't fish here!" he exclaimed. "These waters belong to the Earl of A——." "Do they? I didn't know that," replied the culprit; and, laying aside his rod, he took up a book and commenced reading. The keeper departed, but, on returning about an hour afterwards, he found the same youth had started fishing again. "Do you understand that this water belongs to the Earl of A——?" he roared. "Why, you told me that an hour ago!" exclaimed the angler, in surprise. "Surely the whole river don't belong to him? His share went by long ago!"

The Mill That Never Stops.—Figg—"Talking about pugilism and state laws, did you ever notice it?"

Fogg—"Ever notice what?"

Figg—"That there's no law to prohibit fighting in the state of matrimony."—Boston Transcript.

Can't Shock a Vacuum.—Senator Stone, of Missouri, tells of a young physician in Kansas City who was sneered at by an attorney who was cross-examining him, the rude cross-examiner at last asking:

"Are you entirely familiar with the symptoms of concussion of the brain?"

"I am," was the reply.

"Then," continued the rude one, "suppose that my learned friend here, Senator Stone and myself, should bang our heads together, would that make us have concussion of the brain?"

"It might," was the reply, "give concussion of the brain to your learned friend."

Hoss and Hoss.—A verdict was rendered in circuit court at Bowling Green, Kentucky, that was full of humor, and produced a roar of laughter in the court room. H. F. Richmond, who had swapped horses with L. M. Butler, sued him for \$75, alleging breach of warranty, introducing evidence that the horse was unsound and to prove that the horse was a "stump sucker." Butler filed a counterclaim, and set up that the horse gotten from the plaintiff had fits.

After only a few minutes in the jury room the jury returned the following verdict:

"We, the jury, find that this is a case of hoss and hoss, that neither the plaintiff nor defendant is entitled to recover damages, and that each shall pay his own costs in this cause expended."

Trustworthy.—"Rufus, you old loafer, do you think it's right to leave your wife at the washtub while you pass your time fishing?"

"Yessah, jedge; it's all right. Mah wife don' need any watching. She'll sholy wuk jes' as hard as if I was dah."—Boston Transcript.

Dead Drunk.—We have heard many definitions of drunkenness, but one given by a witness last month at one of the county courts is, we must admit, new to us. "They don't consider they are drunk," said the witness, "until they lie down and pull the mud over them for a blanket."—Law Notes.

A Point in Law.—A prominent lawyer of Miami recently received a call from a colored woman.

"What's the trouble?" inquired the lawyer.

"It's about mah ole man. He's cahyin' on high wit' a lot o' no-count gals, he is, an' sumfin's got to be done!"

"Do you want a divorce?"

"Go 'long man. Divorce nuffin. Think I'se gwine to gin him des what he wants, an' 'low him to go sky-shootin' round wif dem gals. Not on yo' life, mister lawyer, I doan' want no divorce; what I wants is a 'junction."—National Monthly.

The Judge's Error.—"Give one verse of the Star-Spangled Banner."

"I can't do it, judge."

"Quote a passage from the Constitution."

"Too many fer me."

"Then I can't naturalize you, my man."

"But I was born here, judge. I don't want to be naturalized. I'm after a bailiff's job."—Louisville Courier-Journal.

You'll Do Right if you Don't Write.—This anecdote is told of Abe Hummel, whose picturesque career is well known throughout the Union, and well illustrates the fact that it is not always wise to put things in black and white.

A client of Abe's, who was in trouble and who was deeply repentant, was in little Abey's office one day, and said to him:

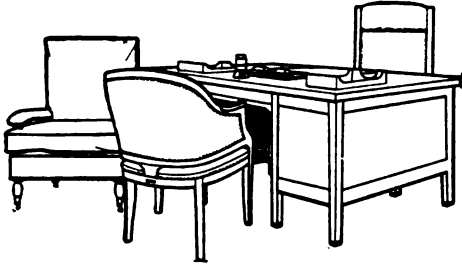
"Mr. Hummel, I have about made up my mind that the best policy for a man is to do right and fear nobody."

"Oh no," replied Abe, "your motto should be, 'don't write and fear nobody.'"

An Eye for Business.—When a lawyer recently told his client that the opinion of the court in his case was to be published in the Lawyers Reports Annotated, and this his case would, by reason of its importance, be known in every town of the United States and all over the world, the client quickly inquired: "Can't you get them to add that the plaintiff keeps the ——— Hotel in the lake shore village of M——, meals 50 cents?"

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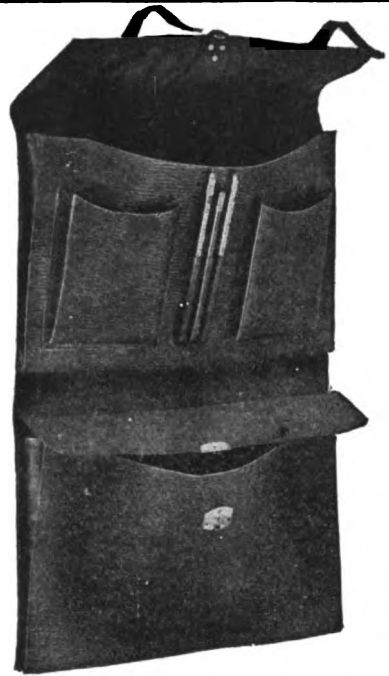
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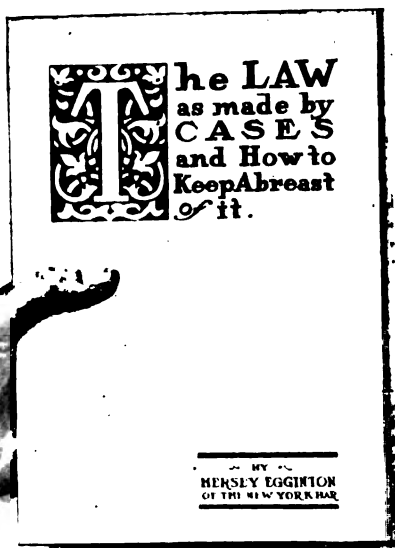
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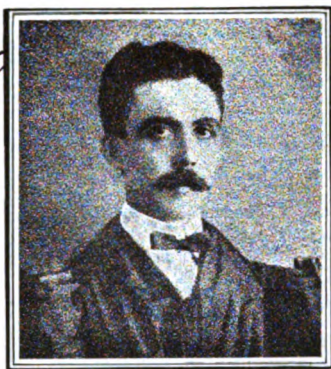
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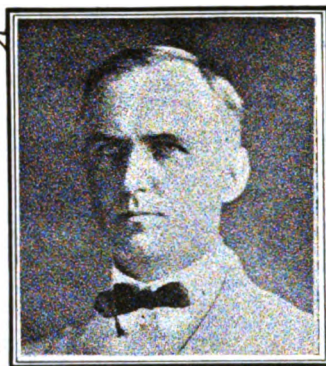
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Justice ADAM C. CARSON.



Justice GRANT TRENT.



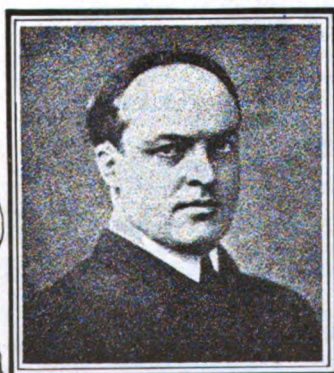
Justice VICTORINO MAPA.



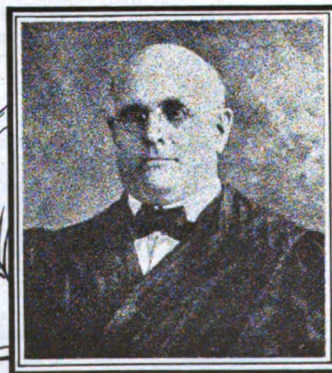
CAVETANO S. ARELLANO
CHIEF JUSTICE
OF THE
SUPREME COURT



Justice FLORENTINO TORRES.



Justice SHERMAN MORELAND.



Justice J. FINDLAY JOHNSON.

The Supreme Court of the Philippine Islands

A Decade of Juridical Fusion in the Philippines*

BY HON. CHARLES SUMNER LOBINGIER,

Judge of the Court of First Instance, Manila, P. I.



IT is now more than ten years since the beginnings of legislation under American auspices in the Philippines. These were in the form of orders by the military governor, and some of them were not only elaborate, but have proven to be permanently valuable pieces of legislation. The civil marriage, *e. g.*, was introduced and is still mainly regulated by what is officially known as general orders No. 68, promulgated by the late General Otis. We shall observe more as we proceed.

Following the military *régime* came a seven-year period of legislative activity on the part of the Philippine Commission, whose enactments aggregated, when the newly chosen assembly came to share the Commission's powers on October 16, 1907, no less than eighteen hundred acts. But back of all this lay a very considerable volume of Spanish law, and the task of the courts has been to adjust, harmonize, and blend these two distinct systems not only of legislation, but of jurisprudence. The attractiveness of this process

from both professional and scientific standpoints justifies a closer examination of the elements to be blended; and the results.

I. The Spanish Remedial Law.

The Code of Civil Procedure which Spain provided for the Philippines was an elaborate and scientific piece of legislation, but these very characteristics tended to make it unsatisfactory in the Archipelago. There were many complaints of delay. Almost every sort of an order, even if interlocutory, was appealable. It was a common belief among merchants and business men that the most meritorious claim might practically be defeated by dilatory proceedings. On the criminal side, complaints were even louder, and the impecunious accused was thought to have no chance as against the law's delay.

II. The American Contribution.

One of the earliest tasks, therefore, of the American authorities, was the substitution of simpler and speedier systems of procedure. The criminal law, naturally, presented the more crying need, and this was met by the military governor in promulgating on April 23, 1900, as general orders No. 58, a brief and simple

*Reprinted from Annual Bulletin of Comparative Law Bureau of American Bar Association.

code embodying the fundamental principles of Anglo-Saxon criminal procedure.¹

The Spanish law on this subject was not sought to be repealed, except so far as it was inconsistent with the new enactment, but it soon fell into disuse. On the civil side, the reform awaited the establishment of civil government in 1901. On October 1st of that year, a new Code of Civil Procedure took effect, incorporating the main features of the reformed procedure in the United States, and modeled, probably, more on the corresponding California instrument than on that of any other single state.² This Code is not nearly so elaborate or detailed as its Spanish predecessor; in fact, its chief aims are simplicity and promptness, and the cause of much hardship and complaint was removed by the following provision, which would seem unnecessary in most American Codes:

"No interlocutory or incidental ruling,

¹ Some time since, the writer received a communication from Colonel R. W. Young, of Salt Lake City, formerly a member of the provisional Philippine supreme court, explaining his authorship of this interesting document.

Recently a letter was received from the Honorable James F. Tracey, of Albany, New York, late a justice of the supreme court of the Philippines, quoting Senator Elihu Root as stating that G. O. 58 was the work of the late General Otis. It is but fair to say, however, that the opinion of those who were in the Philippines when the instrument first appeared substantiates Colonel Young's claim. Among these is the Honorable James H. Blount, formerly a judge of the court of first instance, who, writing in the *Green Bag* (vol. 20, 23, 24), says of G. O. 58:

"It was simply a piece of legislation, a code of criminal procedure, drawn principally by Major R. W. Young, a lawyer of Salt Lake City, a volunteer officer of the Utah battery, who, before the war, had been chairman of the Utah code commission. . . . This gentleman little suspected, in all probability, what a splendid and enduring piece of work he was doing."

² This fact is recognized by Chief Justice Arellano in *Yangco v. Rohde*, 1 Philippine, 410, where he speaks of "California, whose Code of Procedure is strictly in accord with the Code in these islands, as to the remedy in question [prohibition], with respect to which it may be said that the California Code is its true legal precedent."

order, or judgment of the court of first instance shall stay the progress of an action or proceeding therein pending, but only such ruling, order, or judgment as finally determines the action or proceeding; nor shall any ruling, order, or judgment be the subject of appeal to the supreme court until final judgment is rendered for one party or the other."³

By another section,⁴ the supreme court is not restricted, as in many American jurisdictions, to reversing or affirming judgments brought before it for review, but (and this greatly promotes the speedy termination of causes) it "may direct the proper judgment, order, or decree to be entered, or direct a new trial, or further proceedings to be had, and if a new trial shall be granted, the court shall pass upon and determine all questions of law involved in the case presented by such bill of exceptions, and necessary for the final determination of the action."

Still another expediting requirement of appellate practice is that "the court may, in its discretion, make such orders as it deems necessary for expediting proceedings in petitions for certiorari, mandamus, or prohibition proceedings. If the court is not in session, any judge of the supreme court may make such orders in vacation."⁵

Finally, a long step toward rational procedure is made possible by the following section:

"No judgment shall be reversed on

³ Philippine Code Civil Procedure, § 123. Construing this provision, the supreme court said in *Go-Quico v. Manila*, 1 Philippine, 508, 1 Off. Gaz. 384:

"In considering the American authorities, it must be borne in mind that probably no one of the statutes therein construed contained such strong provisions against appeals from interlocutory resolutions as are found in our article 123. The evils resulting from such appeals under the *Ley de Enjuiciamiento Civil* were well known. It was to cure such evils that this article was adopted. It expressly prohibits appeals not only from interlocutory orders, but also from interlocutory judgments."

⁴ Id. § 496.

⁵ Id. § 518.

formal or technical grounds, or for such error as has not prejudiced the real rights of the excepting party.”⁶

III. The Results.

Thus the grafting of the Anglo-Saxon procedure upon the old Spanish legal tree has been accomplished. Of course, this article is not intended to present all the practical features which have resulted, but merely a cursory glance at what, to the lawyer and publicist, should be the most interesting phase of America's great educational undertaking in the Orient. So far from confirming the predictions of evil results, the experiment has already attained a high degree of success. Instead of bringing uncertainty and confusion, the new procedure has removed many of the active causes of those conditions. Far from destroying simplicity, it has introduced and emphasized that feature in all judicial procedure in the Philippines. Nor can it be said that the result of the process has been to substitute an unintelligible system for one familiar and more easily understood. The best criterion of the adaptability of such a system would seem to be found in the frequency of its employment, and judged by this standard, the new system must be admitted to be much more adaptable and

intelligible than the old. The Filipino lawyers, apparently, have no special difficulty in comprehending and applying it, and while the same is not so true of the Spanish lawyers, who are more conservative and more tenaciously attached to the older system, they are not a large factor in the problem. The evident facility with which the new system has already been adopted by the professional representatives of the Filipino people is an eloquent tribute to its fitness; and if the Filipinos are not already demonstrative in their expressions of appreciation, they are likely one day to regard it as among the most beneficent gifts from the great Republic which has assumed the burden of their tutelage and guidance.

Finally, the experiment has demonstrated the feasibility of blending segments of the civil and the common (Anglo-American) law,—the two systems which divide the civilized world;⁷ thus confirming the view that at root the two are really one,⁸ and bringing appreciably nearer the day dreamed of by Rome's greatest orator and advocate, when “*Non erit alia lex Romæ, alia Atenis, alia nunc, alia posthac, sed et apud omnes gentes, et omni tempore una lex et sempiterna, et immortalis, continebit.*”⁹

⁶ Id. § 503. This section has been the means of permitting judgments to be written in English, though Spanish remains the official language of the courts until January 1, 1913, the supreme court holding that the departure was not one which “prejudiced the real rights of the excepting party.” (See *United States v. Casin*, 8 Philippine, 589; *Gaspar v. Molina*, 5 Philippine, 197.)

⁷ Bryce, *Studies in History and Jurisprudence*, 122–123. Mr. Bryce believes that progress towards juridical uniformity is more manifest than that toward similarity in religious conceptions, or even in forms of government.

⁸ Id. Cf. the article of William Wirt Howe on “Law in the Louisiana Purchase,” 14 *Yale Law Jour.* 77.

⁹ Cicero, *De Republica*.

Navy Deserts Guam

GUAM, the Navy Department's Elba, lying midway between Honolulu and the Philippines, is to be deserted for thirty days beginning September 10, and for that period the only thing American about it will be the flag flying from the governor's palace and barracks. But it is not likely that anyone will attempt to haul down the flag in the absence of the defenders. “Old Glory” will continue to flaunt its northern stars to the stars of

the tropic night. The cause of the desertion is that everybody on the island has been granted a vacation and is going away. They will take with them their man-o'-war, the United States station ship Supply, which goes to Olongapo for her annual overhauling, while Captain Dorn, governor of Guam, and the marines under him, will go to various places in the Orient on a thirty day jaunt.

Americanizing an Old System of Law

BY HON. GEORGE V. DOMINGUEZ,

Judge of the District Court of Humacao, Porto Rico.



PRIOR to 1908, and for a period of four hundred years, the Island of Porto Rico had enjoyed a thorough and complete system of Spanish jurisprudence. From the laws of India up to the Civil Code of 1889, the jurisprudence of Spain had been applied and extended to the little island in the Caribbean.

The Legacy of Spain.

The American government found at the time of the formal assumption of the administration of the island, by virtue of the treaty of Paris, that brought to an end the Spanish-American war, a codified set of laws which, in their fundamental principles, greatly differed from the English common law. These laws were: The Civil Code, the Code of Civil Procedure, the Penal Code, the law of criminal procedure, the Code of Commerce, the mortgage law, the regulations for the execution of the mortgage law, instructions for drafting public instruments, the compilation of the organic provisions for the administration of justice, laws relating to public works, laws of railroads, police laws of railroads, provincial and municipal laws, laws relating to civil administration and government, electoral law for election of councilors and provincial deputies, adaptation of the electoral law of Spain of June 26, 1890, Constitution establishing self-government, immigration regulations, navy and collection taxes and custom duties, customs tariff and regulations, notarial laws and regulations, by-laws, and charter of the Spanish Bank of Porto Rico, law of eminent domain, the law of public waters, and the law of civil registry.

Largely adopting for itself the strict principles of the Roman law, Spain had imposed upon the island, by legislation, its own enactments, with very slight modifications, due to difference in local conditions.

Americanization of Porto Rican Jurisprudence.

By the organic act of Porto Rico, commonly known as the Foraker bill, enacted by Congress in 1900, the United States vested in the insular legislature the power to enact for the island all laws not in conflict with the general statutes of the United States, which, when not locally inapplicable, were extended thereto, in their general operation. Showing an intense desire to assimilate modern ideas of government, and with a view to rapidly bring about the true Americanization of the island, the local assembly, acting upon the recommendation of certain officers, enacted in 1904, by an unanimous vote, a Code of Civil Procedure, largely framed after the Code of California, and similar in its abridged outline to those of the states of Montana and Idaho.

As early as 1902, such extraordinary remedies as habeas corpus, mandamus, injunction, quo warranto, certiorari, writ of prohibition, and writ of error, had been speedily adopted, and the native lawyers, from the start, showed a very quick disposition to familiarize themselves with the new procedure. It is to their credit that they became highly efficient and promptly versed in the intricacies of these remedies.

In the same year, the old Penal and Criminal Procedure Codes were repealed, and new ones adopted, also shaped after the California and Montana Codes. There seem to exist, embodied in the Codes of these states, one of which was formerly a Spanish dependency, many

principles that are congenial to the Porto Rican conditions, and these probably are responsible for the selection made.

The Federal bankruptcy act, of course, became applicable to the island when it was made a nonorganized American territory, and so much of the Spanish Code of Commerce as dealt with this matter and regulated commercial failures was impliedly repealed. Even the Civil Code, sanctioned by a sound public policy and tending to promote the stability of domestic and private relations, was in this same year largely revised. Among these amendments most conspicuously stand the law of divorce and the incorporation law, the first somewhat similar to that of California, and the latter liberally shaped after the legislation of New Jersey. Another important and most highly appreciated enactment was the grant of trial by jury in criminal cases. This is, of course, made a part of the law of criminal procedure, and also demonstrates the great adaptability of our people to liberal reforms in the judicial branch of our political life.

In a similar way, other great changes have been effected. A law to regulate the liability of masters (law of master and servant), the law of public corporations, following the New York statute, a political code including a tax law and protection of patents and copyrights, are so

many instances of the quick strides made in local enactments toward the complete Americanization of our jurisprudence.

The mortgage law stands firm, unabated, and judicially upheld, although often assailed and greatly criticized. "Don't touch the mortgage law, for with it will crumble to earth the whole monument of sacred property rights," is the cry. An attempt was made to inject into it something of the Torrens system, but the effort utterly failed; and so any intended change, great or small, will fail, for all our land titles are dependent upon its integrity and continuance; and the Porto Rican landowner, of all landlords in the world, is most conservative.

These various changes have, in a few instances, brought about conflicts, which have, however, been ably and skilfully solved by our supreme court, and gradually but steadily harmony is coming out of the more apparent than real confusion brought about by this intermingling of two widely different systems. Within a short period of years, Porto Rico may become a state of the Union, an autonomous state under American protectorate and control, or simply an organized territory; but whatever its political future, it is bound to become thoroughly Americanized, and this will certainly facilitate the longed-for change toward the liberalization of the government of the island.

There is an ulterior sense in which the world's greatest lawmakers are not its Justinians, Tribonians, Napoleons, or Banthams, but its Stephenions, Fultons, Morses, and their world-girdling compeers, who have so marvelously advanced the socializing conditions of life, and out of which, as from a fruitful soil, the law grows.—W. W. Billson, Esq.,
of the Duluth Bar.



Members of the Supreme Court and Bar of the Canal Zone.

Canal Zone Laws and Judiciary

BY THEODORE C. HINCKLEY,

Member of the Panama Bar.



ALTHOUGH much has been written in recent years with reference to that narrow strip of territory known as the Canal Zone, the matter has been dealt with almost exclusively from a standpoint of canal construction. The chief interest of the American people, in so far as concerns this outlying strip of territory, centers almost wholly in the cost of construction and date of completion of the canal itself, and it is but natural that but little should appear in print regarding the government, laws, and judiciary of that narrow bit of soil leased in perpetuity to

the United States, through which the "big ditch" is being sunk.

Spanish Origin of Substantive Law.

Upon the Zone, the substantive law is largely of Spanish origin, the procedure is derived from certain code states of the Union, and the judges who interpret these laws are American. It might be remarked in passing that only a modicum of the substantive law has ever been translated into the English language.

Prior to the 3d day of November, 1903, the laws of the Republic of Colombia were in force and effect in that portion of territory then known as the Department of Panama. The history of Colombian law may be divided into four

periods, the first of which covers the colonial epoch, during which time the seven Partidas, the Nueva Recopilación, the Novísima Recopilación, and the Recopilación de las Indias constituted the laws that were particularly applicable to the Spanish colonies in Central and South America. The Seven Partidas, so called because they were divided into seven parts, were originally known as the "Libro de las Leyes," or "Fuero de las Leyes." Although begun on June 23, 1256, and concluded in Seville in 1264 or 1265, they were not given legal force until 1348, during the reign of Alfonso XI. The Nueva Recopilación was published during the reign of Philip II., and the Novísima Recopilación, consisting of twelve books, was printed in 1805, during the reign of Charles IV. The first to order a codification of the laws and royal provisions which had been issued for the government of the Indies was Philip II., in 1570; but this was not carried out until 1680, under the reign of Charles II., who put it in force. It consists of nine books, and its full title is "Recopilación de Leyes de los Reinos de las Indias."

The second period, comprising the first years of the central republic, contained many provisions which were enacted for the purpose of harmonizing the new form of government with the civil law. The Spanish law was reformed in so far as it was opposed to the equality of all citizens in the eye of the law, and during this period two collections of law were enacted, called "Recopilación Granadina" and "Appendix to the Recopilación Granadina."

The third period comprises the federation. The creation of the sovereign states, under the constitution of 1853, was commenced in 1855, although the federation was not constitutionally established until 1858, and the first of the nine states to be created was Panama. Each of these states adopted a constitution of its own, the system of government being somewhat similar in theory to that recognized in the United States of North America. It was during this period that the states and then the republic accepted with some modifications the Civil Code of Chile, which is based largely on the

French Civil Code. One of the principal amendments, by the adoption of this Code, was the establishment of civil marriage as the only one legally recognized.

The fourth and last period covers the time from the termination of the war of 1885 up to the present. By that war the extinction of the former sovereign states, with their constitutions and laws, was accomplished, and the present centralized form of government was inaugurated.

The Codes in force in the Department of Panama at the time that it declared its independence, on the 3d day of November, 1903, were the Colombian Civil, Commercial, Penal, Fiscal, Judicial, Military, and Mining Codes, and the Código de Fomento. Others, such as the Police Code, were applicable only to the Department which later became the Republic of Panama.

Changes under American Occupancy.

The United States of North America, by the ratification of the Hay-Bunau-Varilla treaty, having acquired possession of and jurisdiction over the Canal Zone, Congress thereupon delegated the entire control and direction thereof to the President of the United States or to the person or persons designated by him to assume the control thereof. Thereafter the Isthmian Canal Commission was organized, with certain legislative powers, which, it has been tacitly conceded, sank into innocuous desuetude upon the 3d day of March, 1905.

By a letter of the President of the United States, dated May 9th, 1904, it was directed that the laws of the land with which the inhabitants were familiar, and which were in force on February 26th, 1904, should continue to be operative in the Canal Zone.

It was subsequently determined that certain of the Codes were incompatible with the new system of government, and the Penal Code of Colombia was immediately abrogated, and a Penal Code and a Code of Criminal Procedure similar to those in force in most of the states of the Union were adopted. These are contained in a compilation of acts known as the "Laws of the Canal Zone," which also provide for the organization of the Zone judiciary.

The Colombian Judicial Code (Code of Civil Procedure) was supplanted by an American Code based largely upon the present Code of Civil Procedure of the Philippine Islands.

With the exception of the Penal and Judicial Codes of Colombia, the basic law has only been modified from time to time by executive orders issued by or under the direction of the President of the United States. The changes in the great body of the law which have been brought about in this manner have been, however, slight, as most of these executive orders pertain almost wholly to various phases of canal operation. Nevertheless, some, such as the one conferring the right of trial by jury in criminal cases wherein capital punishment or imprisonment for life may be inflicted, have caused a radical departure from the former practice and procedure. Inasmuch as the substantive law of the Canal Zone is therefore to a large extent derived from the civil law, the decisions of the courts of last resort of the state of Louisiana and of the Philippine Islands and Porto Rico frequently constitute judicial precedent for the determination of causes in the Zone courts.

Canal Zone Judiciary.

Act No. 1 of the Laws of the Canal Zone provides for the creation of the judiciary. By its provisions, a supreme court, three circuit courts, and several municipal courts were organized. These last-mentioned tribunals were later abolished by executive order, which established the present district courts, four in number.

The district courts enjoy a criminal and civil jurisdiction slightly greater than that of the justice courts of the various states of the American Union, and the circuit courts exercise practically the same jurisdiction as courts of the same name in the states.

The supreme court of the Canal Zone, in so far as concerns its appellate jurisdiction, occupies a rather unique position. The three justices of this tribunal also sit as circuit judges, and appeals from the decisions of any one as a circuit judge are finally heard and determined by the other

two as justices of the court of last resort. While under this system speedy justice may be obtained by litigants, nevertheless it is the consensus of opinion of bench and bar that the decisions of the supreme court of the Canal Zone should, in certain instances, be subject to review by the Supreme Court of the United States, or by one of the United States circuit courts of appeals, upon which such jurisdiction could be conferred by Federal enactment. Two or three unsuccessful attempts have already been made to prosecute a writ of error from the Supreme Court of the United States to the supreme court of the Canal Zone, but the writ of error has, in each instance, been dismissed for want of jurisdiction. In the case of Coulson, Plaintiff in Error, v. Government of the Canal Zone, a reversal was sought upon the ground that the defendant in the court below had been denied the right of trial by jury. It is a significant fact that shortly after the dismissal of the writ of error by the Supreme Court of the United States, the executive order to which reference has already been made, providing for jury trials in certain criminal cases, was issued. By this order, it is optional with defendants to be tried by a jury or by the circuit judge and two associates, selected in accordance with the former procedure. The accused must file, on the first day of the term for which the trial is set, a statement in writing, indicating his choice. Since the inauguration of the right of trial by jury, 50 per cent of those accused of capital offenses have been acquitted.

Upon the termination of the work of canal construction, the character and nationality of the population of the Canal Zone will materially change. The Americans employed by the United States government will, in the majority of instances, return to their home land. Many of the Spaniards, Italians, Greeks, and laborers of other nationalities will doubtless remain. Agriculture will then be the principal occupation of the inhabitants of the Zone. These new conditions will give rise to the need of special legislation, which will doubtless materially modify the present judicial system.

Arguments from Testimony

BY EDWIN BELL, LL. B.

Being Section V. of Chapter IV. from his treatise entitled
"The Principles of Argument." Reprinted in
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THE AUTHOR



THE word "testimony" means (except when used metaphorically, as when we speak of the testimony of the rocks) the declaration or statement of a witness, made for the purpose of establishing a fact witnessed by him. Evidence is often used to mean testimony. But testimony is a narrower term, and is only one, although a peculiar and important one, of the many classes of facts which are included in the word evidence.

In an argument from testimony the truth of the fact testified to is argued from the fact that the testimony is given. The assumptions on which the argument is based, and which are necessary to give it validity, are that the facts testified to was observed by the witness, that his memory of it is accurate, and that his testimony is an accurate transcript of his memory. In other words, it is assumed, both in courts of justice as well as in the ordinary affairs of life, that a witness is trustworthy unless the contrary is shown, in much the same way that an accused person is presumed to be innocent until he is proved to be guilty. The principle relied on in an argument from testimony may be stated thus:

What a trustworthy witness testifies to is true.

The argument may be expressed in full as follows: Thesis: A assaulted B; Reason: Because this trustworthy witness testified that he observed that fact; Principle: What a trustworthy witness testifies to is true.

Testimony Generally True.

That testimony is generally true is derived from our experience of the great preponderance of truth over falsehood in testimony taken as a whole. "Of few persons indeed," says Best, "can it be said that their adherence to truth is undeviating at all times; with many, its observance appears to depend on circumstances, accident, or caprice; with some, the practice of lying seems inveterate; while certain classes of persons systematically, and as it were on principle, withhold the truth from other classes on particular subjects. But after every abatement has been made for aberration, the quantity of truth daily spoken immeasurably exceeds that of falsehood; and Bentham even goes so far as to assert that from the mouth of the most egregious liar that ever existed, truth must have issued at least a hundred times for once that wilful falsehood has taken its place."

This general truth which is found in experience is accounted for and confirmed by certain general causes continually in operation, sometimes called sanctions of truth, which tend to promote truth-speaking, and to render it natural and habitual. These causes may be described as the natural, social, religious, and legal sanctions of truth.

(1) Man's love of ease and natural aversion to unnecessary effort prompts him to speak truth rather than falsehood, since it is easier to relate from memory than to invent a lie.

(2) Man's happiness and welfare in all social relations—in fact, his very ex-

istence in a social state—are dependent upon mutual confidence in one another's word. This confidence would be destroyed if the practice of lying became general, and is promoted by truth-speaking. The infamy and disgrace attached to the word "liar," and the loss of respect suffered by a liar, are further inducements to veracity. "We are so constituted," says Wayland, "that obedience to the law of veracity is absolutely essential to our happiness. Were we to lose either our feeling of obligation to tell the truth, or our disposition to receive as truth whatever is told to us, there would at once be an end to all science and all knowledge, beyond that which every man had obtained by his own personal observation and experience. No man could profit by the discoveries of his contemporaries, much less by the discoveries of those men who had gone before him. Language would be useless, and we should be little removed from the brutes. Everyone must be aware, upon the slightest reflection, that a community of entire liars could not exist in a state of society."

(3) The religious sanction is founded in the belief, common to all religions, that truth is acceptable and falsehood abhorrent to the Deity, and that He will, in some way, reward the one and punish the other.

(4) The legal provisions that testimony given before judicial tribunals shall be given under oath, and that perjury is a criminal offense punishable by fine or imprisonment, operate as additional inducements to truth-speaking, and constitute the legal sanctions of truth.

How Argument from Testimony Regarded.

The argument from testimony may be regarded as an argument from an effect to a condition, the giving of the testimony being the effect, and the reality of the fact testified to being a more or less probable condition of the effect; in other words, it is argued that the testimony would not have been given if the fact testified to were not true. Or it may be regarded simply as an argument from effect to cause, the existence of the testimony, and of the impression in the mind of the witness, being effects of the facts

testified to; just as a picture on a photographic plate is the effect of the object to which it is exposed. On the assumption that the witness is trustworthy, the cause or fact witnessed may be proved by the exhibition of the effect; that is, by a declaration in words of the impression made on his mind.

Distinction between Matters of Fact and Opinion.

In courts of law a distinction is made between testimony as to matters of fact and testimony as to matters of opinion. Opinion testimony, or, as it is commonly called, expert evidence, consists in the statement of a witness made to establish not a fact observed, but a fact inferred from facts observed by him or others, or from a given or supposed state of facts, in cases where the fact to be established is remote from common knowledge or observation, and the witness has special or expert knowledge, or skill in the interpretation of that class of facts; as, for example, where it is sought to establish the insanity or incapacity of a testator, or the insanity of a person accused of crime, or the effects of various poisons on the human system, etc.

Extensive Use of Argument from Testimony

The argument from testimony is in many respects the most important, as it is the most widely used, of all arguments. The greater part of our knowledge of the present, as well as of the past, is derived from testimony. Arguments in courts of law as to matters of fact are almost wholly based on testimony. Facts witnessed may be preserved in the memory or in writing for an indefinite time, and the witness or the writing may be brought before those sought to be convinced, whenever convenient or necessary. But for this convenient use of testimony, no argument could be made except in presence of the facts themselves, or of those who had witnessed the facts. The argument from testimony is often the basis of all other arguments, the facts which constitute the reason in other forms of argument being usually established for the jury, or those sought to be convinced, by testimony.

Burden of Disproving Testimony.

The presumption that all testimony delivered under the sanction of an oath, and perhaps without it, ought to be believed until special reasons appear for doubt or disbelief, has the effect of placing the burden of proving a witness to be untrustworthy upon him who disputes the truth of his testimony. The rule, which is found in all systems of jurisprudence, is based on considerations of convenience. In the first place, it would involve a great waste of time if the trustworthiness of every witness had to be affirmatively proved before his testimony should be received. Secondly, if a witness is not trustworthy, that fact may usually be established without difficulty in any given case.

The general grounds upon which the testimony of a witness may be impeached will be discussed in a subsequent chapter.

Argument Ex Silentio.

The argument *ex silentio* is an argument drawn from the absence of testimony or silence of a witness to disprove a fact which, if true, would probably have been mentioned by him. Thus, an argument against the reality of the miracle of raising Lazarus from the dead, which is mentioned in the fourth Gospel, is often founded on the silence of the other three Gospel writers, who, it is argued, would have known and mentioned such a fact if it had taken place. This is a negative argument from effect to cause, or rather from the absence of an effect to the absence or nonexistence of a cause which, if it existed, would probably have produced the effect. Standing alone, this argument is of little value, but taken in connection with the other facts, it might form an important part of an argument from circumstantial evidence.

Lycurgus and Solon inscribed their laws, as they imagined, for endless durability, and Justinian prepared his Pandects for universal application; but the Common Law of England has proved the basis of a superstructure beneath whose shadow all other systems have dwarfed, and abandoned their hold on human affairs.

—Daniel W. Voorhees

Our Socialistic State of Panama



“OUR Socialistic State of Panama,” states the Boston Transcript, was pleasantly analyzed by Farnham Bishop in a recent address, who described what he considered was a benevolent form of government as maintained by the Isthmian Canal Commission. According to the speaker, the Commission had in a brief time, by its rigid, but at the same time considerate, regulations, brought order out of chaos,—a happy family from a household of constant wrangles. Although it may be assumed that conditions in the Canal Zone are not quite ideal, Mr. Bishop would have one believe that they are very nearly so. The details of Canal Zone Socialism were given by the speaker as follows:

Our family live in a house designed by an official architect, built by state labor on public land, and completely furnished by a paternal government, from the concrete piles it stands on to the ventilator in the roof. My mother orders to-morrow's groceries by calling up the commissary on the free public telephone, and pays for them, not with money,—for none would be accepted,—but with coupons from one of the booklets issued by the state to its servants. As these coupons are void if detached, she orders a carriage from the nearest government corral, and drives to the commissary store, where she may purchase almost any article at cost price. In the meanwhile, I have traveled down the line of the state railway to visit a friend, who shows me the government quarries and shipyard, until it begins to rain, and we enter a public recreation building for government ice-cream sodas and billiards. In the evening we expect to dine at the largest and most luxurious of the government hotels, where there will be a dance to which I shall take my friend's

sister, if the doctors will let her leave the beautiful sanatorium for convalescents at Taboga, a place, like the rest of the medical and sanitary service, as free and as compulsory as the public schools.

The secretary of the Isthmian Canal Commission sits in his office in the administration building, editing the official newspaper, answering a thousand questions, and attending to as many complaints as he cannot anticipate, for his duty is to see that 40,000 employees, of more than forty different nationalities, get fair treatment and give efficient service. He must evolve, for a hundred different kinds of labor, systems of pay and promotion that will please alike the employee, the walking delegate of his union, the head of the department, the chief engineer, and the investigating congressman with an eye on the taxpayer. Protected from political patronage by the rampart of a civil service examination, he is free to abolish outworn offices, rearrange departments, and break up snug little backwaters that would prevent all the water from going over the dam.

The empty complaint file testifies to the negative success of Canal Zone Socialism, but does not the rhythmic hum of the well-oiled machinery lull those about it into a dreamless bureaucratic sleep? What incentive for exertion, what chance for distinction, has the individual in such a community? The theorists have said that the reward of the soldier, fame and a bit of red ribbon, would suffice,—an idea much scoffed at by practical men. But one of the canniest and most practical of men doubled and trebled the output of his foundry by having a broom hoisted to the stack head of the champion furnace. Acting on this principle, the Canal Record began to publish steam shovel statistics in September, 1907, and soon after it had to publish an order forbidding the practice of picking up large boulders as they rolled down the hillside after a blast. The steam-shovel men were out to beat

the last man's record, and devil take the dipperbooms. They raised the record for a day's excavation from a scant thousand cubic yards in September, 1907, to that made by steam shovel No. 213 in the Culebra Cut last March,—4,823 cubic yards, place measurement.

Evidently there is efficiency as well as collectivism on the Isthmus.

Such is the elaborate system of government ownership which has grown up in the Canal Zone at Panama. I say "grown up," because the United States had no idea of becoming a paternal landlord and caterer when it made the treaty with the Republic of Panama, and bought out the bankrupt French company, in 1903. It then found itself in possession of valuable treaty rights and much secondhand machinery, and with sovereignty over two municipal plague spots, separated by 40 miles of rank jungle, and connected by two more or less parallel lines of rusty rail. Everywhere were filth, disease, and liquor; every house and shop crammed with full bottles, and the ground covered with a thick stratum of empties. The only way to make yourself forget the abominable food you had to eat, the unspeakable hovel you lived in, and the friend you buried yesterday, was to get drunk; and all hands did so with ghastly results, as the size of the graveyards testify.

It was not enough to clean up the dirt and remove the danger from fever; the Zone had to be made decently habitable for Americans; native accommodations were of the poorest quality for the highest price, and, as in the days of the building of the Panama Railroad, all food had to be brought from New York or New Orleans. A line of steamers fitted with

cold storage to carry that food, a system of refrigerator cars, and local commissaries of the Isthmus, hotels, and messes for the bachelors, and homes for the married men, were the natural outgrowth of this demand. To-day the subsistence department does a business of \$7,000,000 a year, and is self-supporting. To keep the men out of the saloons,—now greatly restricted by a high license,—there were built recreation buildings, managed by Y. M. C. A. secretaries, and then arose public libraries, baseball leagues, fraternal societies, women's clubs, and what not, all more or less under government ownership and control. The result is a community which is in all but one respect—that of absolute social equality—amazingly like those described by Bellamy and Wells.

"But, my dear sir, this is rank unmitigated state Socialism," exclaimed a globe-trotting M. P. to the secretary.

"I know it," replied that erstwhile disciple of Godkin and *laissez faire*, "but I have always thought that Socialism under Carlyle's benevolent despot would be no bad thing; and we flatter ourselves that in the Isthmian Canal Commission the benevolent despot has been discovered for once."

It would be a much harder task to discover a form of government that would be assuredly benevolent as well as despotic, for the Republic at large, instead of for a colony or for a city. Perhaps we shall never discover it, or, when we think we have, it will turn sour, as all too closely centralized governments have done in the past. Certainly we are not ready for state Socialism to-day.



The Forty-Ninth Star on the Flag



NOTHING less than the dissolution of the nation will prevent the organization of the state of Alaska. In 1850, when California was admitted into the Union, she had no lines of railway, telegraph, trades, or business, connecting her with the other states, and was thought to be only valuable for place gold. Her agriculture and trade, her railroads and present grandeur, have all grown since her admission. Alaska is a great country, and richer in all its natural resources than California was in 1850. Alaska has more gold than California and Colorado; more copper than Montana and Arizona; more coal than Pennsylvania, West Virginia, and Ohio; and more fish than all American waters combined. Her output of gold and fish for last year amounted to nearly \$32,000,000, and had increased from \$15,000,000 in 1900. Her total cash trade with the rest of the United States for 1909 amounted to more than \$52,000,000, while that between China and the United States amounted to only \$48,000,000. She is a better customer to the merchants of the United States than Hawaii, Porto Rico, or the Philippines. The trade value of every white man, woman, and child in Alaska, with the United States, for 1909, amounted to \$1,302.75, while that of every inhabitant in Hawaii amounted to only \$277.65, Porto Rico to \$48.51, and the Philippines to \$3.30.

Alaska has a better climate and greater agricultural capacity than Norway, Sweden, and Finland combined. Her rich and fertile valleys are capable of supporting a much larger population than that of the three countries named, without mentioning the population which will be supported by her mines and other natural resources.

The Constitution of the United States provides that "new states may be admitted by the Congress into this Union." Thirty-three new states have been admitted by the Congress into this Union, and Congress has formulated and settled the rules by which such admissions are made. Beyond the western lands which were owned by the thirteen original states, the nation acquired other territory, carved new states out of these acquisitions, and admitted them into the Union. The Louisiana, Florida, Oregon, and Mexican territories were thus acquired and organized into states, and within this summer the two remaining portions of these acquisitions have been admitted as the states of Arizona and New Mexico.

There are three recognized and well-established elements necessary to the formation of a new state and its admission into the Union,—acquisition, incorporation, and organization.

1. Acquisition. The nation acquired the Louisiana, Florida, Oregon, and Mexican territories, and Alaska by treaty of purchase from foreign nations, and practically the same form of acquisition was adopted in each instance, so that, in that respect, Alaska stands equal with the other acquired territories.

2. Incorporation. The act of admitting foreign territory into the body corporate of the nation is called "incorporation." In the acquisition of Louisiana a treaty obligation was assumed by the United States, in regard to the right of the inhabitants of the acquired territory to participate in the government of the United States. That obligation is stated in the third article of the treaty, and provides for incorporation as follows:

"Article 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution,

to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

In acquiring Florida, Oregon, the Mexican territories, and Alaska, the same national obligation of incorporation was assumed. The treaty of cession with Russia stated the obligation a little differently, but with the same legal effect as follows:

"Article 3. The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years, but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

Alaska is the last great continental territory with a national promise of incorporation and organization.

The Supreme Court of the United States, in the *Rasmussen Case*, involving the constitutionality of the Alaska jury law, said in respect to the incorporation of Alaska: "We are brought, then, to determine whether Alaska has been incorporated into the United States as a part thereof, or is simply held, as the Philippine Islands are held, under the sovereignty of the United States as a possession of dependency;" and in answer to that query the court declared that "under the treaty with Russia ceding Alaska, and the subsequent legislation of Congress, Alaska has been incorporated into the United States, and the Constitution is applicable to the territory."

When the Constitution of the United States has once extended over incorporated territory, there is no power, constitutional or otherwise, to withdraw it.

3. Organization. The first step is to organize a territory, the second to organize a state. Alaska was organized as a territory in 1884. In the *Binns* and other Alaska cases, the Supreme Court of the United States has squarely held that "Alaska is one of the organized territories of the United States." In the *Binns* and *Rasmussen Cases* that great court has repeated, too frequently to be misunderstood, that Alaska is an "organized territory and incorporated territory;" that the Constitution extends over

it and cannot be withdrawn, and that Alaska has the same legal and constitutional status as all the territory embraced in the Louisiana, Florida, Oregon, and Mexican acquisitions; therefore that Alaska has the constitutional right to statehood.

If Alaska's population and area, her resources, development, and advancement, be compared with those of earlier territories and with many of the states, it will be discovered that this great territory is now ready for statehood. She has a greater relative density of population than fifteen territories which have preceded her. Alaska now has 110 persons resident within her borders to each 1,000 square miles of area. When created a territory, Michigan had but twelve persons to each 1,000 square miles, Ohio territory and Dakota but fifteen, Indiana but twenty, Missouri but twenty-five, and Utah but thirty-one. Nine territories were organized having less than fifty persons to the 1,000 square miles, and six others having less than 100 to that area. Alaska has now more school children in actual attendance in public schools within her borders than Mississippi, Indiana, Michigan, Dakota, or the great territory northwest of the Ohio river had white settlers, when they were each organized into a territory and given an elective legislative assembly.

Alaska has a greater population than nine states in the Union had when they were permitted to adopt a Constitution, and their star was placed upon the flag.

In 1850 California was made a state without ever having been organized as a territory. Her population was of the same character as that of Alaska, and but little greater in number. She had the placer mines as her sole element of wealth; her greatness to-day demonstrates the wisdom of her organization as a state. In every element of material wealth, in minerals, fish, agricultural capacity, and in opportunity for the laboring man and home builder, Alaska is farther advanced than was California upon the date of her admission as a state.

It is probable that a bill will be offered at the December meeting of Congress to organize the state of Alaska.—*Collier's*.

Is Mr. Roosevelt Right?

Acts of the Supreme Court of the United States were sharply criticized by Theodore Roosevelt in an address before the Colorado Legislature, on August 29th.

The Colonel says :

"I am anxious that the nation and the state shall each exercise its legitimate powers to the fullest degree. When necessary they should work together, but, above all, they should not leave a neutral ground in which neither state nor nation can exercise authority, and which would become a place of refuge for men who wish to act against the interests of the community as a whole.

"Let me illustrate what I mean by a reference to two concrete cases. The first is the Knight sugar trust case. In that the Supreme Court of the United States, under cover of what a man whose interest is chiefly in sane constructive stewardship can only call a highly technical legal subtlety, handed down a decision which rendered it exceedingly difficult for the nation to effectively control the use of masses of corporate capital in interstate business, as the nation obviously was the sole power that could exercise this control, for it was quite beyond the power of any one state. This was really a decision rendering it exceedingly difficult for the people to devise any methods of controlling and regulating the business use of great capital in interstate commerce. It was a decision nominally against national rights, but really against popular rights.

"The second case is the so-called New York bakeshop case. In New York city, as in most large cities, the baking business is likely to be carried on under unhygienic conditions, which tell on the welfare of the workers, and, therefore, against the welfare of the general public. The New York legislature passed and the governor of New York signed a bill remedying these improper conditions. New York state was the only body that could deal with them; the nation had no power whatever in the matter.

"Acting on information which to them seemed ample and sufficient, acting in the interest of the public and in accordance with the demand of the public, the only governmental authority having affirmative power in the matter, the governor and the legislature of New York, took the action which they deemed necessary after what inquiry and study was needed to satisfy them as to the conditions and as to the remedy.

"The governor and the legislature alone had the affirmative power to remedy the abuse. But the Supreme Court of the United States possessed and unfortunately exercised the negative power of not permitting the abuse to be remedied. By a five to four vote they declared the action in the state of New York unconstitutional, because, forsooth, that men must not be deprived of their 'liberty' to work under unhygienic conditions. They were, of course, themselves powerless to make the remotest attempt to provide a remedy for the wrong which undoubtedly existed, and their refusal to permit action by the state did not confer any power upon the nation to act.

"In effect it reduced to impotence the only body which did have power, so that in this case the decision, although nominally against state rights, was really against popular rights, against the democratic principle of government by the people under the forms of law.

"If such decisions as these two indicated the court's permanent attitude, there would be real and grave cause to give alarm; for such decisions, if consistently followed up, would upset our whole system of

popular government. I am, however, convinced, both from the inconsistency of these decisions with the tenor of other decisions, and, furthermore, from the very fact that they are in such flagrant and direct contradiction to the spirit and needs of the times, that, sooner or later, they will be explicitly or implicitly reversed.

"I mention them merely to illustrate the need of having a truly national system of government, under which the people can deal effectively with all problems, meeting those that affect the people as a whole by affirmative Federal action, and those that affect merely the people of one locality by affirmative state action."

Judge Alton B. Parker Replies.

Note:—Judge Parker, it will be remembered, wrote the prevailing opinion of the Court of Appeals of New York in the "bake shop case."

"It is safe to assert that the attack upon the Supreme Court of the United States by Mr. Roosevelt in his address to the legislature of Colorado will not be approved by the bench and bar and the thoughtful people of this country who appreciate the importance of the judiciary in our governmental system, and the necessity for a continuance of the existing public confidence and affection in our courts.

"It happens that in the case of *People v. Lachner*, referred to in the address as the 'bakeshop case,' the prevailing opinion of the court of appeals of this state was written by myself, with concurring opinions by Judges Gray and Vann. Judge O'Brien and Bartlett wrote dissenting opinions; so that in all five opinions were written in the court of appeals, showing the appreciation by that court of the fact that the question was a very close one about which minds must differ; indeed, this fact was made very prominent in the interesting debates around the consultation table, as well as in the opinions written.

"The history of this case indicates how narrow was the dividing line between upholding and rejecting the statute. The trial judge held the statute constitutional, the appellate division affirmed his decision by a vote of three to two, and the court of appeals affirmed the appellate division by a vote of four to three. The Supreme Court of the United States reversed the court of appeals by a vote of five to four.

"Every judge in every court gave to this important question his best effort, which is strongly evidenced by the differences of view of the members in the several courts. That fact should be quite sufficient to protect the greatest court in the world from offensive criticism from any source, and especially from one who heretofore manifested his dissatisfaction with a department of government which was performing the independent functions conferred upon it by the Constitution so as to neither encroach upon its co-ordinate departments of government, nor to allow them to encroach upon it."

Judge E. N. Farrar, President of the American Bar Association, says :

"Mr. Roosevelt assails the members of the greatest legal tribunal in our country, simply because some of the decisions of that competent body do not meet his approbation. It is the most unwarranted assumption the American people have heard of in years."

Jackson H. Ralston, Washington, D. C., states :

"Colonel Roosevelt was not in contempt of court in making his criticisms of the decisions of the Supreme Court."

Are Mr. Roosevelt's criticisms justifiable, or a proper exercise of the right of free speech? What say our readers?

The Editor's Comments

Short Talks on Timely Topics.

Case and Comment

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Opportunities for Lawyers in Our Foreign Possessions

THE lawyer who would seek fame and fortune in those dominions recently under the rule of Spain ought, of course, thoroughly to understand the Spanish language. In the Philippines legal proceedings are conducted in this tongue, and will be for some years to come. Commercial transactions are mainly carried on in Spanish. The public archives and the great body of the laws are written in it, and probably nine out of ten of a lawyer's possible clients would be unable to consult with him in any other form of speech. Land titles, the records of which are preserved in

Spanish, are a prolific source of litigation in all our island possessions.

The modernized practice in these countries is a combination of the common and civil law. To win success, a lawyer should be well grounded in the principles of the latter system. In this respect, practitioners who have gone abroad from Louisiana have a decided advantage.

The Philippines offer the widest, although perhaps not the most attractive, field. There are many promising locations outside of Manila, but to the average person existence in the Provinces would be irksome, owing to the bad sanitary conditions and poor water supply. Continual residence in a tropical climate is also apt to deteriorate a man accustomed to northern latitudes. This fact is recognized by the government, which gives its employees periodic leave of absence.

Porto Rico, although densely populated, has only two cities of over 35,000 inhabitants, and the field there is comparatively limited.

In the Canal Zone legal proceedings to condemn land are conducted before the Isthmian Commission. An appeal lies from their findings to the Supreme Court of the Canal Zone. Litigation, aside from condemnation proceedings, consists largely of criminal cases, most of which involve petty offenses.

In all our island possessions there is a young native bar springing up, many of the members of which have received their education abroad.

Hawaii doubtless presents the most alluring field. Its climate is unrivaled. Its system of jurisprudence is founded upon our own. Its resources are being rapidly developed.

American capital is pouring in a golden stream into our new possessions, and American enterprise wholly dominates the commercial and industrial fields. There is great corporate activity, and the lawyer who can secure these interests as clients has a prosperous future before him.

Canal Zone and Citizenship

THE question as to whether the time of residence in the Canal Zone, of alien employees of the United States, is allowed by law to count in making the five years' residence necessary for citizenship, has been called to the attention of the Bureau of Naturalization of the Department of Commerce and Labor, by an inquiry from the Canal Commission. In reply, the bureau states that the question is one of a judicial character, and that it can only express its opinion.

The bureau, up to the present time, has had no application which would call attention to the question, but is inclined to the view that residence in the Canal Zone is not residence in the United States, within the meaning of the naturalization law. It seems to be definitely settled, however, that residence in all other territorial possessions of the United States is deemed residence applicable to the five years necessary for naturalization.

Perils of Public Officials

NOT since the simple days before firearms and explosives has there been any adequate protection or assurance against assassination. In those early times a ruler in a dagger-proof shirt was safe enough, if the courtier whose privilege it was to taste the royal food for poison was faithful.

But no precaution can offset the pistol or the bomb in the hands of the murderer who disarms suspicion by appearing as one of the crowd of well-wishers and admirers of the man whom he is about to slay.

"The attempted assassination of Mayor Gaynor," says the Evening Post, "has inevitably revived queries which were in everybody's mouth at the time of the murder of President McKinley. Cannot our high officials be securely guarded from such perils? Is there no way of making the penalty for crimes of this sort so fearful as to prevent them? Should not even criticism of those in responsible positions be forbidden as leading to crime? To these questions

the answer has to be in the negative. Despite all the precautions that can be taken,—and every precaution ought to be taken continuously,—it remains true that exposure to the stroke of an assassin has to be set down among the permanent risks of men prominent in public life. As King Humbert coolly said, after his first escape from attempted murder, such things are among the hazards of the trade. The mayor himself not long ago remarked to a friend who remonstrated with him for going about unguarded, that no one but a lunatic could desire to harm him, and against lunatics it was impossible always to be protected.

"The truth that there is in this should not lead us to overlook the other truth, that our chief executives ought to keep near them men skilled in the detection of criminal impulses. The fact that protection cannot be made absolute is no reason for not making it as full as possible. Secret service men are not able to make the life of a President perfectly secure, but they can greatly diminish the hazards; can, as they repeatedly do, turn away cranks and megalomaniacs and half-cracked haunters of men in high office.

"In the case of Mayor Gaynor, the vengeful spirit which led to the murderous attacks upon him puts sharply before us the peculiar risks of an official who seeks to render government honest and efficient. Here was an employee discharged for ample cause, brooding over his fancied wrongs, nourishing his resentments and desire for revenge, until it took this horrible form. But any executive who determinedly sets about cleaning up the public service, enforcing economies, resolutely cutting out the deadwood, dismissing the incompetent and the crooked, is certain to provoke a great amount of this lurking ill-will."

It is predicted in Washington that the attempted assassination of Mayor Gaynor will hasten legislation for the better protection of high officials in the government service.

Following the death of Garfield, the act of succession was passed. Since the murder of McKinley, there has been much agitation in favor of Federal legis-

lation providing for some drastic preventive or penalty for attacks on public officials.

One measure popularly suggested was the death penalty for the mere assault on the President of the United States or anyone in line of succession to the presidency. Another was to allow the Federal courts jurisdiction over all attempts upon the life of the President, Vice President, or any member of the Cabinet. Still another provided for the rigid exclusion of all immigrants of anarchistic tendencies.

Prominent men have interested themselves in this particular legislative problem. President Roosevelt, in his first annual message, urged stricter espionage or deportation of anarchists. In addition, he asked that the Federal courts be given jurisdiction. Nothing came from the recommendation further than that action by the Senate which adopted the Hoar bill, providing that the death penalty should be visited upon anyone assassinating the President; a term not to exceed twenty years for anyone advising an attack upon the President; a death penalty for anyone aiding in the escape of an assassin of a President, and providing for a suitable guard for the President by Army officers. The House passed the Hoar bill after its adoption by the Senate, but with a number of objectionable amendments. The measure was thrown into conference, where it died without action.

Republican and Democratic leaders alike are anxious that Congress shall take definite action on the subject.

The Sky Lawyer

IN the development of the professions marching on with the progress of invention, the aeroplane lawyer is about to appear.

Men seeking mastery of the air are invading the United States Patent Office, and, at the present rate of productivity in aeronautic ideas, it is predicted that the volume of litigation which will soon follow will be incalculable. There are now more than 140 applications for patents relating to the single point of automatic balance for air craft. In addition

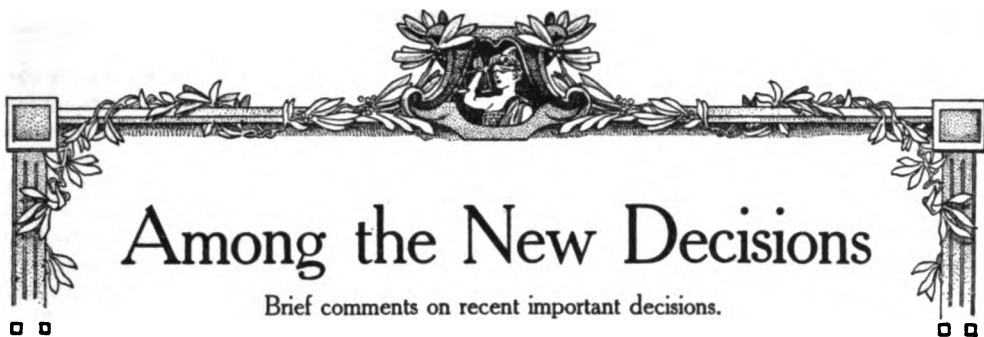
there are hundreds of applications for patents for motors, planes, propellers, skids, and other essentials in air navigation.

"From the present outlook," a patent lawyer said recently, "we will soon have in this country a new crop of aeroplane lawyers, men who have specialized in the law of the air, and who keep track of the hundreds of aeroplane patents that probably will be granted."

"Just as there are lawyers," says the Lincoln Nebraska Journal, "who become especially learned in the regulations governing the high seas, so there will be men before long making a specialty of the laws governing the skies. A conference of jurists from the various nations has been held at Paris at different times during the last six months, for the purpose of considering the rights of people who use the skies, and also the rights of people who own land under them. It will require a long time to work out an adequate system of international law governing such matters, but a start has been made by an agreement that 'the air over inhabited states, including the 3-mile limit of the sea, is free, subject to the right of the state over which the air space exists to take any proper and necessary steps for the national protection and for the protection of the private rights of its inhabitants.' An aviator flying over a foreign country would under this arrangement be subject to the laws of that country only in so far as his conduct affects the rights of the people or the security of the government. All events happening in the balloon which do not touch those rights would be subject to the jurisdiction of the country to which the aerostat belonged. This is applying, so far as it can be done, the principles underlying the admiralty laws. The details must be worked out as experience shows more laws to be necessary. In the course of the next twenty-five years, the law of the sky will be an important branch of the international legal regulations."

Acknowledgment

We are indebted to the Manila Times for the portraits of the Philippine judges and lawyers which appear in this number.



Deportation of undesirable aliens. The bureau of insular affairs of the War Department

has been informed that the supreme court of the Islands, on July 30, decided that the Philippine government possesses all powers, military and civil and judicial, necessary to govern the Islands, and has power and duty to deport aliens whose presence is found injurious to public good and domestic tranquility; that the governor general of the Philippine Islands is invested with plenary power to deport obnoxious aliens, and, in the absence of express rules as to methods, he may use such methods as his judgment and conscience dictate; that the judicial department, in the absence of express legislative authority, will not intervene to control such power or to inquire if the governor general is liable in damages for its exercise.

This decision will presumably end a controversy which arose through the following conditions: For more than a year prior to August, 1909, there had been developing in Manila some secret organizations among the Chinese, so powerful that they finally began measures similar to those taken by similar societies in San Francisco, and which placed reputable Chinese merchants under a system of blackmail and practically in a state of terror. The courts were powerless, as the perpetrators of crimes could either intimidate the complainant and his witnesses, or produce an overwhelming array of witnesses to prove alibis, or present evidence in support of their side of any case.

The authorities caused twelve men, members of these secret societies, one of them being a prominent citizen, and the others being classed as merchants and

property holders, to be delivered to the Chinese consul in a launch August 20, 1909.

The consul receipted for their personal and registration papers, and put them on a steamer specially chartered by the Chinese, which bore them direct to Amoy, China.

This action was taken in the absence of the governor general, but on his return he assumed responsibility for it. There was considerable local excitement, the action of the government being criticized by some as arbitrary, but the great majority of people thoroughly approved the action taken.

Revival by partial payment of claim discharged in bankruptcy. While it is well settled, in this country at least, that the moral

obligation of the debtor to pay a debt which has been discharged in bankruptcy is sufficient to support an express and distinct promise to do so, without any new consideration, it is equally well settled that partial payments are not sufficient, of themselves, to revive a debt so discharged, nor to establish a new promise to pay the same. This rule is applied in *Matthewson v. Needham*, 81 Kan. 340, 105 Pac. 436, holding that the moral obligation to pay the former indebtedness is a sufficient consideration for a new promise, but, in order to revive a liability upon a claim discharged in bankruptcy, there must be an express promise to pay the specific debt. A promise cannot be implied from the fact of part payment or other circumstances. This case is accompanied in 26 L.R.A. (N.S.) 274, by a note reviewing the earlier authorities dealing with the question.

Extinguishment of lien of chattel mortgage.

The point whether the definite surrender of a chattel mortgage lien, and the acceptance of a lien of a different character upon the same property, will extinguish the lien of the mortgage, seems to have been brought before the courts for the second time only, in *Farkas v. Third Nat. Bank*, 133 Ga. 755, 66 S. E. 926, holding that where a mortgagor, on maturity of his debt, pays to the mortgagee a certain sum of money on the debt, and executes a new note for the balance, which he secures by hypothecating warehouseman's receipts for nine bales of cotton, being the same cotton covered by the mortgage, and the mortgagee enters upon the note and mortgage the word "satisfied," and surrenders them to the mortgagor, and the mortgage is duly canceled on the record, this amounts to an extinguishment of the mortgage, and the new security is inferior to an intervening mortgage on the same property, of which the first mortgagee had notice at the time he canceled his mortgage and accepted the new security.

Easements created by severance of tract of land with apparent benefit existing.

The general and prevailing rule with reference to easements created by severance of a tract of land with apparent benefit existing, which is substantially the same as the common-law rule, is that where an owner of land subjects part of it to an open, visible, permanent, and continuous service or easement in favor of another part, and then aliens either, the purchaser takes subject to the burden or benefit, as the case may be. This rule is illustrated by several recent cases. In *Rollo v. Nelson*, 34 Utah, 116, 96 Pac. 263, it is held that the easement in a permanent cement walk which has been constructed by a property owner along the edge of property which he has subdivided into building lots, to furnish access from such lots to the street, will, upon severance of the property, pass to the grantees of the respective portions thereof.

In *Liquid Carbonic Co. v. Wallace*, 219 Pa. 457, 68 Atl. 1021, it is laid down that the fact that a road over one por-

tion of a tract of land for the benefit of another portion was intended by the owner to be only temporary will not prevent a right to its permanent use from passing with the grant of the latter portion, where, at the time of the grant, it was apparent, with nothing to indicate that it was not intended to be permanent.

In the Oregon case of *German Savings & Loan Co. v. Gordon*, 102 Pac. 736, it is decided that a passageway inclosed on both sides, consisting of planks, with steps leading to them at both ends, furnishing access from a house located on one street to a parallel street in the rear, across property owned by the one who owns the house, which is reasonably necessary to the enjoyment of the property on which the house is located, will pass by implication with a grant of the latter property.

These cases are accompanied in 26 L.R.A.(N.S.) 315, by an exhaustive subject note which elaborates the large body of case law pertaining to the subject.

Measure of damages for right of way for telegraph or telephone line.

Although there is a conflict, the weight of authority apparently sustains the right of an abutting property owner to compensation where telegraph or telephone poles and wires are placed upon a public street or highway, as an additional servitude is created. The measure of damages when an abutting owner is entitled to compensation is held in *Illinois Telegraph News Co. v. Meine*, 242 Ill. 568, 90 N. E. 230, to be the value of the land occupied by the poles, and the amount of decrease in the value of the land between the poles, owing to the right of the company to use it jointly with the property owner for stringing and maintaining the wires. The decisions discussing the measure of damages appropriate in such cases are presented in a note appended to the *Meine* Case in 26 L.R.A.(N.S.) 189.

Effect of previous divorces upon right to divorce.

The recent Michigan case of *Orton v. Orton*, 123 N. W. 1103, 26 L.R.A.(N.S.) 276, holds that an absolute divorce cannot be denied to one establishing a

statutory ground therefor, because she had already obtained one divorce, and another had been granted against her for her own fault, when proper investigation on her part would have shown her that her latest matrimonial venture could not be a happy one, even though the statute provides that the divorce may be granted whenever, in the opinion of the court, the circumstances of the case shall be such that it will be discreet and proper so to do. This appears to be a case of first impression on the effect upon one's right to divorce of the fact that his or her previous marriages had been dissolved by divorce.

Fraudulent procure- By the great weight
ment of genuine sig- of authority it is
nature as forgery. held that fraudu-
lently procuring a
genuine signature to an instrument does
not constitute forgery. In conformity
with this rule it is held in *State v. Pfeif-*
fer, 243 Ill. 200, 90 N. E. 680, 26 L.R.A.
(N.S.) 138, that one who secures the
execution of a duplicate note by fraudu-
lently representing that the original was
lost or destroyed does not, by passing it
for value, become guilty of forgery, un-
der a statute making the passing or ut-
tering of a forged instrument forgery,
on the theory that the note is in fact false
because it is not what, on its face, it pur-
ports to be. The cases upon the subject
are collated in a note which accompanies
the L.R.A. report of the case.

Closing highway against The recent
automobiles. Maine case of
State v. Mayo,
75 Atl. 295, is authority for the proposi-
tion that the legislature may, without im-
pairing the constitutional right to equal
protection of the laws, or the right of
pursuing happiness, authorize a munic-
ipal corporation to close to automobiles
dangerous streets, the use of which by
such machines may endanger the lives of
their occupants or of those driving horses
upon the streets. The case also deter-
mines that an ordinance forbidding the
use of automobiles on highways con-
structed over deep ravines and along the
edges of cliffs, to protect the lives of the
occupants of such vehicles and of those

attempting to use horses along the roads,
is reasonable. The decision is accom-
panied in 26 L.R.A.(N.S.) 602, by a
note upon the power to prohibit the use
of automobiles upon public thorough-
fares, which is supplementary to an ear-
lier note to *Christy v. Elliott*, 1 L.R.A.
(N.S.) 221.

Admissibility in crim- A judgment for
inal prosecution of or against an ac-
judgment ren- cused person is
dered in civil not admissible in
action. a criminal prose-
cution wherein

he is prosecuted for the transaction in-
volved in the civil proceeding, since the
parties in the two actions are not iden-
tical, and the judgment in the civil ac-
tion is rendered on a mere preponder-
ance of the evidence, which would not
be sufficient in a criminal case to satisfy
the jury beyond a reasonable doubt. This
rule was applied in *State v. Weil*, 83
S. C. 478, 65 S. E. 634, holding that a
judgment enjoining a liquor nuisance,
founded on *ex parte* affidavits in a pro-
ceeding in which defendant did not ap-
pear, is not admissible in evidence in a
criminal prosecution against him for sell-
ing intoxicating liquor in violation of
law.

Duty of carrier to ac- The question of
cept sick or dis- the duty of a
abled passenger. common carrier
to accept a phys-
ically or mentally disabled person as a
passenger is presented in the recent Mas-
sachusetts case of *Connors v. Cunard*
Steamship Co. 90 N. E. 601, holding that
a common carrier is bound to accept as
a passenger one who is ill, provided it
can furnish the necessary accommoda-
tions, and the passenger is willing to pay
for what he demands. But, as appears
by the note which accompanies this case
in 26 L.R.A.(N.S.) 171, the right of
sick and decrepit persons to be transport-
ed is not unlimited. Nor can a carrier be
compelled to accept an unattended insane
person or an intoxicated person as a pas-
senger. On the other hand, however, it
is not justified in refusing to accept an
individual as a passenger upon the sole
ground that he is blind.

Liability of carrier to passenger who falls over fender.

An interesting question is presented in *Powers v. Connecticut Co.* 82 Conn. 665, 74 Atl. 931, which holds that a street car company is not liable for injury to a former passenger who, after alighting from the car, is injured by falling over the rear fender, which has become loose from the fastenings intended to keep it up while the car is running in the opposite direction, and has fallen into the position which it should occupy if it were in front of the car, where the company does not know that it is down, and the passenger might discover that fact by proper attention, although the accident occurs after dark. The few decisions bearing on this point are collected in a note which accompanies the case in 26 L.R.A.(N.S.) 405.

Effect of bankruptcy of contractor on right to enforce materialman's lien.

A question which has apparently been considered by the courts but once before is raised in *Pike Bros. Lumber Co. v. Mitchell*, 132 Ga. 675, 64 S. E. 998, holding that, in order to foreclose a materialman's lien for material furnished a contractor to be used in improving the property of another, it is necessary that the materialman have judgment against the contractor in a previous action, or the contractor must be sued concurrently in the foreclosure proceedings with the owner of the property improved. If the contractor be adjudged a bankrupt, so that no judgment *in personam* can be had against him in an action at law, his immunity from liability to a personal judgment will not give the materialman a right to foreclose his lien in equity against the property improved.

What constitutes "serious and permanent disablement."

The recent English case of *Hopwood v. Olive and Partington, Limited*, 102 L. T. Rep. 790, says the Law Times, is one of the very few cases, if not the only one, that has come before the court on the question as to what amounts to "serious and permanent dis-

ablement" within the meaning of the workmen's compensation act, subsection 2c. This statute relieves an employer from liability to pay compensation to a workman who is injured by accident arising out of and in the course of his employment, if the injury is attributable to his "serious and wilful misconduct, . . . unless the injury results in death or serious and permanent disablement."

In the case referred to the workman was a lad employed at certain paper mills. His work was to catch the paper as it came off the cutting machine, and at the end of the week to clean the machine. On one occasion he started, in breach of his employers' regulations, to perform that latter duty while the machine was still running, with the result that his right hand was caught in a cogwheel, and his first and third fingers were cut off at the top joint. The county court judge had no course open but to find that the workman had been guilty of "serious and wilful misconduct." His Honor held, however, that the injury which the workman had sustained amounted to "serious and permanent disablement" within the meaning of the subsection. He accordingly gave effect to the exception in favor of the workman, and awarded him compensation. That the disablement, if it was "disablement" at all, was "permanent," there was no gainsaying. But whether it was "serious" enough to satisfy the subsection was another consideration. The court of appeal, adopting the view taken by the county court judge, declared that it was. "The workman," said the master of the rolls (Cozens-Hardy), "may be disabled in the labor market from being employed in innumerable occupations which otherwise would possibly have been open to him. This renders it a serious disablement, and it is not one of a temporary character." Lord Justice Buckley gave it as his opinion that "disablement" meant the same thing as "disable," that is to say, less able to earn his full wages. Loss of portions of two fingers of the right hand would unquestionably, in certain callings, render a workman much less able to earn full wages. Regarded in that light, he would be both seriously and permanently disabled.

Harness as "ways, works, and machinery." The recent Massachusetts case of *Murphy v. O'Neil*, 90 N. E. 406, 26

L.R.A.(N.S.) 146, holding that the harness used in connection with a merchant's delivery is not part of the "ways, works, and machinery," within the meaning of a statute making him liable for injuries to a servant for defects therein, the same as to strangers, seems to be one of first impression.

Liability of municipal corporation for tort in connection with property used by it. The question whether a municipal corporation may be made to respond in

damages for a tort, either of misfeasance or nonfeasance, in connection with a particular department of municipal activity, depends, according to the weight of authority, upon the question whether the duties of that department pertain to the public or to the private functions of the municipality; and the same criterion applies to the liability of a municipality for torts in connection with buildings used by it. This view is confirmed by the recent Kentucky case of *Columbia Finance & T. Co. v. Louisville*, 122 S. W. 860, holding that a municipal corporation is not liable for the negligence of one operating an elevator in the city hall, which is erected and maintained for the transaction of its public affairs. The case is accompanied in 25 L.R.A.(N.S.) 88, by a note discussing the considerable body of case law pertaining to the subject.

A similar question arose in *Libby v. Portland*, 105 Me. 370, 74 Atl. 805, 26 L.R.A.(N.S.) 141, in which it is held that a municipal corporation which rightfully attempts to operate, for its own benefit, a farm within its limits, is liable for injury to one rightfully on the premises, through a step which it negligently permits to become out of repair.

Civil liability for negligent use of firearms. The law undoubtedly requires a very high degree of care from

all persons using firearms in the immediate vicinity of others, no matter how lawful or innocent such use may be. It was held in the recent

case of *Rudd v. Byrnes*, 156 Cal. 636, 105 Pac. 957, 26 L.R.A.(N.S.) 134, that a member of a party of hunters is negligent as matter of law in firing at an object moving through bushes which conceal it, without taking time to discover what it is, which results in his hitting a member of the party. A discussion of the earlier cases on this subject may be found in a note accompanying the case of *Siefker v. Paysee*, 4 L.R.A.(N.S.) 119.

Doctrine of "last clear chance." A novel application of the doctrine of "last clear chance" is

made in *Chesapeake & O. R. Co. v. Hawkins*, 174 Fed. 597, holding that a railroad company which removes from its track a child of tender years which is at play there, in order to let an engine and car pass, must, in case the engine is to stop a short distance away and return, either place the child in care of someone competent to take charge of it, or take such care in the return of the engine as is required from the knowledge of the child's situation. As shown by the note which accompanies this decision in 26 L.R.A.(N.S.) 309, the doctrine, as ordinarily applied, operates to relieve the person injured, or the person bringing the action in the event of the death of such person, from the effect of his or her own antecedent negligence, which, but for such doctrine, would have constituted contributory negligence, and thus defeated the action, even assuming that the negligence of defendant had been established. There is no apparent reason, however, why it should not be applied, as in this case, so as to obviate the effect of the antecedent negligence of the custodian of the child, assuming that such negligence would otherwise have been imputable to the child.

Bringing in new parties by cross bill or cross complaint. It is held in the recent case of *Patton v. Marshall*, 97 C. C. A.

610, 173 Fed. 350, that the omission of necessary parties from a bill in equity cannot be supplied by the filing of a cross bill. As appears by the note accompany-

ing this case in 26 L.R.A.(N.S.) 127, there is considerable conflict among the decisions as to the propriety of bringing in new parties by cross bill. The principal authority for the rule adopted in *Patton v. Marshall* and other cases holding that new parties may not be added by cross bill is a *dictum* of Curtis, J., in *Shields v. Barrow*, 17 How. 130, 15 L. ed. 158, as follows: "New parties cannot be introduced into a cause by a cross bill. If the plaintiff desires to make new parties, he amends his bill, and makes them. If the interest of the defendant requires their presence, he takes the objection of non-joinder, and the complainant is forced to amend, or his bill is dismissed. If at the hearing the court finds that an indispensable party is not on the record, it refuses to proceed. These remedies cover the whole subject, and a cross bill to make new parties is not only improper and irregular, but wholly unnecessary."

A number of courts, however, have adopted the rule that, when affirmative relief is sought by a cross bill, new parties who are necessary to that relief, or to a complete determination of the questions raised, may be brought in.

Under the Codes it has been repeatedly held that new parties may be brought in by a cross complaint when they are necessary to a complete determination of the controversy, although the right has sometimes been denied under special circumstances.

Conditional pardon. Under the constitutional provision conferring the pardoning power upon the governor (Okla. Const. art. 6, § 10), it is held in *Re Ridley*, 106 Pac. 549, 26 L.R.A.(N.S.) 110, that the governor has exclusive power to parole a convict, with such restrictions and limitations as he may deem proper, and, upon a violation by such convict of the terms and conditions of his parole, the governor has power to revoke his parole, and direct that such convict be rearrested, and returned to custody, and required to serve out the unexpired part of the sentence of the court, as though no parole had been granted, even after the time his sentence would have ended but for the suspension thereof by the parole.

The cases dealing with the right of the pardoning power to require one who has committed a breach of the conditions of his pardon to serve out his term, even after the expiration of the term, will be found gathered in the notes and decisions to *Ex parte Prout*, 5 L.R.A.(N.S.) 1064; *Scott v. Chichester*, 16 L.R.A.(N.S.) 304; and *Re Kelly*, 20 L.R.A.(N.S.) 337.

The decisions upon this subject are not uniform. The reason, if not the weight of authority, seems to sustain the proposition that the conditions annexed to the pardon of a convicted criminal cannot be enforced after the expiration of his sentence.

Constitutionality of legislative limitation of hours of labor. It is held in the California case of *Ex parte Martin*, 106 Pac. 235, that a statute limiting the hours of labor in mines and smelting and reduction works is not special legislation, and does not grant special privileges and immunities, nor lack uniformity of operation, because it does not apply alike to all classes of laborers engaged in occupations dangerous to health. The earlier cases upon the subject are collated in a note to *People v. Williams*, 12 L.R.A.(N.S.) 1130, to which the note appended to the *Martin Case* in 26 L.R.A.(N.S.) 242, is supplementary.

Competency of physician or spiritual adviser to testify. A question which seems not to have been previously before the courts is presented in the recent Iowa case of *Blossi v. Chicago & N. W. R. Co.* 123 N. W. 360, 26 L.R.A.(N.S.) 255, holding that the attending physician of an injured person is competent to testify to the facts of the securing from him, by the one responsible for the injury, of a release from liability therefor. The case further decides that the spiritual adviser of an injured person, who is called to act as interpreter in a transaction looking to a release of liability of the one causing the injury, is not incompetent to testify to the facts bearing upon the obtaining of it.

Pollution of water course by stock. The question whether one is liable in damages, or can be enjoined from letting his cattle or other live stock have access to a stream or other body of water, or from maintaining yards or pens inclosing them near such stream, because of a resulting pollution of the water, depends upon the further question whether or not the use so made of the stream is a reasonable use; the rule being well established that each riparian owner is entitled to a reasonable use of the waters as an incident to his ownership, and that the use of each must be consistent with the rights of others. This rule is well illustrated by the recent Washington case of *McEvoy v. Taylor*, 105 Pac. 851, holding that the owner of land on which a small stream arises, forming a small pond near its source, cannot be enjoined by a lower riparian owner from letting his live stock and geese have access to the pond, although they pollute the water to some extent, since the use is merely a reasonable one, which he is entitled to make. The case law upon the question is discussed in a note accompanying this case in 26 L.R.A. (N.S.) 222.

Sufficiency of designation of goods sold out of larger lot. To say what is a sufficient selection or designation of goods sold out of a larger lot to effect a change of ownership from seller to buyer is made difficult in dubious cases by the long-established and universally prevalent doctrine that a sale of anything in existence and a deliverable state, in the vendor's possession, is complete and passes title *eo instanti* as soon as the bargain is struck and a price is agreed upon, without either a change of possession or payment of the price. It is still more difficult when, as is usual, the principals in the contract of sale and purchase fail

distinctly to express their purpose with respect of passing the title, and their intentions have to be spelled out from the contract, and the circumstances amid which the bargain was made.

This question is fully elaborated in a subject note appended to the case of *Barber v. Andrews*, in 26 L.R.A. (N.S.) 1, also reported in 29 R. I. 51, 69 Atl. 1, and holding that a sale of 20 tons of hay from a larger quantity in a mow is complete, so as to prevent its subsequent attachment as the property of the seller, although there was no distinguishing mark placed upon it, and the portion sold is not separated from the portion retained, where it is agreed that the amount sold shall be taken to be the 10,000 cubic feet lying nearest a specified wall of the barn, extending from side to side of the mow.

Liability of city confining flood waters within banks of stream. An exception to the general rule that a riparian proprietor has no right to erect a levee or artificial bank along the margin of a stream, which will cause superabundant water, in time of ordinary floods, to flow upon or injure the lands of the opposite or other riparian proprietors, is presented in the recent Iowa case of *Walters v. Marshalltown*, 120 N. W. 1046, holding that a municipality which, acting under statutory authority and with ordinary skill and prudence, raises the grade of a street so as to confine flood water of a stream to the channel, is not liable for injury thereby inflicted upon lower riparian property by the increased flow of water over it. By the note accompanying this case in 26 L.R.A. (N.S.) 199, and which discusses the few earlier decisions upon the question, it appears that no authority has been found which directly supports the court in the decision.



New or Proposed Legislation

A glance at the labors of our lawmakers.

□ □

Hawaii Goes Wet.—By a vote of more than three to one, the territory of Hawaii, which recently went through the throes of a sharp contest on the liquor question, has decided against the proposed law, which would prohibit all manufacture or sale of intoxicants. Every island returned a majority for the saaloons, the total vote being 7,283 against 2,185. Just as in several of the southern states, where the presence of the negroes induced thousands to vote for state-wide prohibition, consideration for the native element in Hawaii was the main argument on the "dry" campaign.

Hawaii Prospering Under Organic Act.—Interest in Hawaii now centers in the working of the organic act passed at the last session of Congress.

"This act assures a more liberal policy of dealing with the government lands," said Senator J. N. Dowsett, of the Hawaiian territorial legislature, to a Sun reporter. "Homesteaders may now apply for the opening of public lands whether they are under lease or not, provided in the former case the leases contain a withdrawal cause. It is hoped that as a result a good class of homesteaders will take up the lands rather than that speculators should get it, and the new law makes this possible. The last paper I got from Honolulu contained a proclamation of Governor Frear announcing the opening of large tracts on the different islands, which is the first of such proclamations.

"Hawaii is now very prosperous, as sugar is bringing a good price. One or two cotton plantations that have been started are prosperous. There is much land not fit for sugar growing which is good for cotton or pineapples."

It will be news to many to hear that Hawaii is doing a big business in Formosa with machinery, and putting up sugar factories complete, but Mr. C. Hedemann, manager of the Honolulu Iron Works Company, says that his company has already installed five such factories, and when in Japan recently he closed a contract for a sixth.

"At Honolulu," he said, "we have foundries and machine shops, copper-smith and blacksmith shops, and employ 600 mechanics, all Caucasians. The business has been established for fifty years, but since annexation people in the islands have spent over \$100,000,000 in developing the industry of cane sugar, which in all the factories except one is made into what is called raw sugar, to be sent partly to San Francisco, but mostly to New York and Philadelphia, and sold under contract to the American Sugar Refining Company. The sugar industry has developed perhaps 100 per cent in the last ten years, and in its development brought an increasing demand for the newest designed machinery, particularly that which will save labor. We have built in the last ten years nine factories in the Hawaiian Islands, the smallest with a capacity for grinding 500 tons a day, and the largest 2,500 tons."

Philippine Independence.—The Hon. Manuel L. Quezon, resident commissioner and delegate from the Philippines, says the New Orleans Picayune, made an eloquent appeal to the House of Representatives in Washington at its last session, for the independence of the Archipelago. He gave full credit to the United States for the many benefits that

American rule has conferred on the islands, and particularly for the embellishment and improvement of the city of Manila, but he pointed out that all these benefits had only accentuated the strong desire of the Philippine people for independence.

While Mr. Quezon admitted that much had been done for public education, and that commerce had been stimulated by the construction of good roads and highways, he claimed that, notwithstanding all these benefits, his people felt the rule of the Americans was, after all, a foreign yoke, which they desired to have removed. It was a constant source of humiliation for the people of the islands to feel that they were subjects of a power, without the possibility of becoming citizens and having a voice in the shaping of the laws under which they are governed as a colonial possession.

While the appeal of the Philippine delegate will no doubt find a sympathetic response among many Americans, still the fact remains that the controlling forces in the United States are opposed to any disposition of the islands which would loosen the control which is now exercised over them. The appeal has, in fact, fallen on deaf ears as far as Congress is concerned.

The one weak point about according independence to the Philippines is the fact that, if independent, they would not be able to maintain their autonomy without the assistance and protection of the United States. Cuba, which now holds that relation to us, is a sufficiently heavy burden, without undertaking the more serious one in the case of a domain so far removed as the Philippines. To be responsible for the autonomy and good behavior of the Philippines, without any authority or power over them, would be an intolerable burden.

Were the islands to be granted independence outright, without an American protectorate or any responsibility on our part for their future administration, it would be tantamount to turning them over to any foreign power strong enough to take and hold them. Left to themselves, the islands would soon lapse into a state of unrest and revolution, which would invite foreign aggression.

News despatches recently stated that Leonardo Osorio Reyes, twice elected governor of Cavite, Philippine Islands, and who served as governor of that lively province when President Taft was the Governor General, enjoying a personal friendship with the nation's Chief Executive, visited him at Beverly recently, and spent a pleasant hour and a half on the veranda of the President's cottage at Burgess Point, exchanging reminiscences of the days when Mr. Taft ruled over the islands. Putting up a patriotic plea of independence of the Filipinos, former Governor Reyes told President Taft that his people felt that they were capable of governing themselves, and were eager that they might have the opportunity to show that they could conduct their own affairs.

The President listened with interest and told his old-time friend that he appreciated the wonderful strides that had been made in the Philippines, but said he did not think that the time was ripe, for perhaps a generation or so, for real independence for the Filipinos. He told Reyes that he wanted to visit the islands again, and that he watched with interest the progress in the Philippines.

Jacob M. Dickinson, our Secretary of War, found it necessary during his recent visit to the islands, to define the limitations of a cabinet officer and to explain to the Filipinos the nature of his visit. At Lucena, a reception was given in honor of Secretary Dickinson and Governor General Forbes, and one of the members of the assembly, who was presented to the Secretary, urged immediate independence for the islands. Another assemblyman, as an alternative, urged a popular Constitution and an elective Senate. In replying, Secretary Dickinson said that there were limitations to the position of a cabinet officer, and he regretted that the Filipinos apparently had been cruelly and reprehensibly misinformed as to the significance and purpose of his visit. He said Congress was the only place where the political status of the island could be discussed.

The islanders might just as well make up their minds once and for all that their status as American colonists will indefinitely continue.

Filipinos Have Postal Banks.—While Americans are wondering, says the Minneapolis Journal, when, where, and how the postal savings system is to be established, the untutored native may waive his pass book, and remark that in the Philippines the postal savings bank is an old thing. Whether beads and clam shells and brass rods are received as deposits is not mentioned, but the main fact is that the wards in the far Pacific have a privilege not yet accorded to their guardians.

A recent report received at the Treasury Department shows that there are in the Islands 280 postoffices at which deposits are received. There were 12,331 depositors, and the amount of the money they had placed in the care of the government was 1,621,275 pesos or Philippine dollars, worth 50 cents in United States money. The government in using the money is protected by the guaranties of banks with which a part of the postal funds have been deposited.

Investments have also been made by the government officials in charge of the postal banks, in Manila city bonds and railroad bonds and in first mortgages. Among the depositors are 3,542 Americans, 7,709 Filipinos, 398 Europeans, and 264 Asiatics. The rate of interest on deposits is $2\frac{1}{2}$ per cent, but the government reserves the right to change the rate at the end of any year.

The system has worked satisfactorily to all concerned. The Philippines were favored with postal banks in advance of the states, because they were not obliged to await action by Congress. When the President became convinced a few years ago that postal savings would be a good thing for the Filipinos, he ordered the system established, and it was done. Congress postponed action for years, and it was not until the closing hours of the last session that a postal savings law was passed.

The Bath Tub Ordinance.—Aurora, Illinois, by police and health board, remarks the Minneapolis Journal, enjoins the bath once a week upon each and every citizen. In the name of sanitation, this invasion is made of personal liberty. Shade of Thomas Jefferson, what crimes against

individual freedom are being committed in this un-republican age!

Is the age of sumptuary legislation to return? Is what we are to wear, to eat, how we are to live, in what manner, with what proportion of luxuries, to be prescribed by statute, explicit and manifold, until we are hedged in worse than they are in Germany by placards bearing the word *Verboten* (forbidden)? Are we to recur to the blue laws of Connecticut, and, if still allowed to kiss our wives on Sundays, be forbidden kissing our children week days, on account of microbes?

The sumptuary legislation of the past fell into disrespect primarily because of its folly. It harassed, without being provocative of any good. On the contrary. And out of that quarrel with the concrete viciousness of concrete laws arose the abstract notion, formulated into a political principle, of the inherent wrong of such legislation.

Nobody proposes in this period a return to the sumptuary ordinances of the past, which, if correspondent to the customs of the Sixteenth and Seventeenth Centuries, grew irksome in the Eighteenth and intolerable in the Nineteenth.

But there exists no abstract evil in sumptuary mandates. A sumptuary ordinance dictated by reason and science must in practice work good, and is a very different matter from a sumptuary ordinance arisen from an obsolete custom, or grown out of a worn-out superstition.

Science is merely in the beginning of its practical application to the conduct of life, and to impose correct science of living upon citizens is not tyranny, but sound policy and beneficent exercise of power. Care will have to be exercised to prevent fad legislation. But there is proved science as well as speculative science, and it is not tyranny to compel individuals to wash, and not to expectorate upon sidewalks. A physically filthy person in these days is a sanitary peril and a public nuisance.

The Parole of Federal Prisoners.—Congress seems to be quite as much impressed with the new notions about the parole of prisoners and the probation system, says the Daily Picayune, as many of the individual states appear to be.

It has recently passed a law which will, if the President approves it, make things decidedly easier for the constantly increasing number of Federal prisoners who are incarcerated for violating the Federal statutes.

Under the new law, any Federal prisoner who is sentenced to a year or more, and for less than a lifetime, who has not had a previous conviction, and has behaved himself well, is entitled to his parole after having served one third of his time. If in any way he violates the terms of his parole, he may be ordered back to prison. There is to be a parole board in each judicial district, consisting of a Federal judge, some private citizen, and the superintendent of prisons at Washington. These are to determine in each case whether a convict is entitled to a parole, and issue orders for his release.

This law is very similar to the parole and probation systems now in force in a number of the states. Where the new system has been tried it is said to have worked well, and it is reported that the number of paroled prisoners who violate their parole is extremely small. The whole idea is that, where prisoners remain in prison for long terms of years for first offenses, they become confirmed criminals, with little hope of reformation, whereas the release of first offenders after a certain period, on parole and under surveillance, gives them an opportunity to redeem themselves and become again useful citizens.

It is to be feared, however, comments the *Evening Post*, that this act has been hastily and unadvisedly passed. Among the crimes with which the penal laws of the United States deal, there is one class to which the usual arguments in favor of the indeterminate sentence and the parole system are singularly inapplicable. Such crimes as bank wrecking, systematic defrauding of the government, or criminal financial operations generally, are committed by men not because they have never had an opportunity for self-development, nor because they have never acquired habits of order or of regular work. And when they are put in prison, the object of the law is not at all—or at most in an insignificant degree—to prevent a repetition of the same

or a similar crime by the same person. Such a man finds no difficulty in being the most exemplary of prisoners; he needs no prison discipline to make him polite, neat in his person, punctual in his daily tasks, efficient in the despatch of work. Whether his sentence should be a year or six years or twenty years is a question the true answer to which depends not on the facts developed during his prison life, but on the facts brought before judge and jury at his trial. He suffers in prison for one purpose, and one purpose only,—that knowledge of the dire punishment which society thinks it necessary to impose for his crime may prevent others from committing it. To confuse his case with that of the shiftless or hopeless fellow who falls into the clutches of the law through the commission of some petty crime is to lose sight of the sole weighty purpose of the law in this most important domain.

This enactment would not only indirectly, but directly, also open the prison doors to convicted bank officers and others unfaithful to a public trust. It would except from the benefits only persons guilty of murder, rape, or incest; which is as much as to say that any Federal convict could have his parole after serving one third of the term for which he was sentenced,—for murder, rape, and incest are punishable under Federal laws only when committed on Federal territory or on the high seas, on American vessels, or on pirate craft.

This act may also be criticized on the ground that where Federal prisoners are confined in a reformatory institution of a state it makes the parole law of such state applicable, and puts the execution of the law and the supervision of the discharged convicts in the hands of the local parole officers. This would apply to the paroling of Federal convicts as many different rules as there are state institutions harboring such prisoners; and the state laws would often be ill adapted to meet the exigencies of the Federal criminal law.

Are Island States Coming?—The chief features of the Olmstead bill, recently passed by the House of Representatives,

says the Boston Transcript, are the boon of citizenship and the provisions it makes for a bicameral Porto Rican legislature, both branches of which shall eventually be elective. The senate in the beginning will have an appointive majority, the chiefs of the executive government, but at each election one elective senator is to supplant an appointive senator. Seven elections will be enough to eliminate altogether the appointive element of the Senate's membership. In the meantime, the elective senators will have become the majority. The suffrage of the island is restricted under the bill by educational and property qualifications which will materially reduce the electorate. It is also required that the members of the popular branch, which has from the first been elective, shall be actual residents of the districts they are chosen to represent. Under the present methods, it is declared, dominating influence is easily acquired by a few politicians who select their constituencies for themselves. Briefly, Porto Rico's "Constitution," or organic law, is recast, and is assimilated to the American model.

Though the Olmstead act, if passed, will be the most radical piece of legislation affecting Porto Rico put upon our statute book, it yet will be logical in view of our policy towards that possession. Almost unnoted by the American people, Porto Rico has gone step by step, with brief halts intervening, towards the portal of the Union. Conquered by the United States but twelve years ago, and ceded to it by the treaty of Paris, Porto Rico for a short period had none but military government. A temporary tariff was established, which was succeeded by absolute free trade with the United States. A civil government supplanted military rule, and with it or after it came a variety of changes, all headed towards ultimate assimilation. The election of a popular house of the legislature by practically manhood suffrage, the application of the United States coastwise maritime laws to trade between this country and the island, were steps in a direction which those who authorized them endeavored to conceal

from themselves. A year or two ago, another illustration of the process of Americanization was afforded by the conversion of the Porto Rico regiment from a local "provisional" corps, whose existence depended from year to year on appropriations, into an organization of the "permanent establishment." It had been found that if young Porto Ricans were not commissioned among its officers, local sentiment would be affronted, while, if they were, the anomaly was presented of American officers who were not Americans citizens. In a similar spirit Congress changed the status of the resident commissioner of Porto Rico in Washington from that of an envoy, to that of a territorial delegate. Like the Philippine commissioner, the commissioner of Porto Rico now sits in the House, participates in the debates, and does everything but vote. Twelve years ago those Republican leaders who backed up McKinley were a unit against even the probability of Porto Rico and Luzon entering the Union. The late Orville H. Platt, of Connecticut, had as great a share as any Senator in bringing about the retention of the Philippines and the acquisition of Porto Rico, and his words may be cited as expressing the governing opinion that, because we had insular possessions, we need not have island states. Writing to Professor Fisher, of Yale, Senator Platt thus defined his position:

"The Philippines would belong to us, rather than become a part of us. We should govern them, or see that they were governed, and, if we discharge our duty to them in that respect as we should, it will be to their incalculable benefit. The idea that we cannot under our system acquire or possess any country, territory, or even island of the sea, unless we intend to admit our acquisition to the full privilege of statehood, has, in my mind, no foundation to rest upon."

Since Senator Platt's day we have been drifting away from the "colonial system" he contemplated, and towards an "Americanization," that is irresistibly drawing our island possessions to the portals of statehood.



Bar Associations

What the Bar Associations are doing and saying.

The American Bar Association

The thirty-third annual meeting of the American Bar Association convened at Chattanooga, Tennessee, on August 30th. President Charles F. Libby, of Maine, presided.

The report of the committee on international law mentions the summary execution of the Americans, Cannon and Groce, in Nicaragua last November. The court martial and death of the foreigners, the report says, who seem to have been regularly commissioned by Estrada and to have complied with the rules of civilized warfare, were acts of inhumanity and also betokened a national animosity which the United States was justified in resenting.

The committee on commercial law reported its conviction that the national bankruptcy act is a wise measure. It recommended every effort to prevent the repeal of this act. The committee reported that it had requested suggestions from prominent business men and that one such suggestion was for the enactment of a Federal law making exemption under the bankruptcy law uniform throughout the United States. The existing law preserves the several state laws with their various interpretations of exemption, making it difficult for credit men to compute a basis for credit.

To mitigate the law's delays the special committee to suggest remedies and formulate proposed laws to prevent delay and unnecessary cost in litigation urged that influence be brought to bear to secure the passage of the following legislation, which is already before Congress:

"First, that issues of fact may be found specially by a grand jury, reserving the decision of questions of law

for subsequent consideration by the trial judge or by the appellate court, with power to order final judgment upon the law held applicable to the facts by the jury.

"Second, that judgment shall be rendered upon the merits, without regard to technical errors that do not affect the merits."

This committee also declared that the rules in admiralty in many districts are sources of delay and unnecessary expense to litigants. Objection was made to rules requiring the testimony of all witnesses to be reduced to writing and in some districts to be printed before it can be considered.

The committee on laws reporting and digesting declared that "there can be no question but that the bulk of our reported decisions is becoming intolerably large." It was suggested that the bar insist that decisions of no effect in the elucidation or development of law should not be reported. The committee also said that there is need for a digest giving a comprehensive statement in logical order of the whole body of law as it exists in the United States to-day.

The committee of the National Civic Federation of Reform in Legal Procedure of the American Bar Association of which R. W. Breckenridge, of Nebraska, is chairman, has adopted the following recommendation to be embodied in a reformed criminal practice code:

"No indictment or information shall be held defective at any stage of the proceedings provided it fully informs the defendant of the offense with which he is charged.

"Upon any second or subsequent trial of a criminal cause the testimony of any witness who testified on a former trial and is dead or beyond the knowledge of

the court may be introduced by the prosecution or defense."

The officers elected for the ensuing year are: President, Edgar H. Farrar, of New Orleans; secretary, George White-lock, of Baltimore; assistant secretary; Albert C. Ritchie, of Baltimore; treasurer, Frederick E. Wadhams, of Albany, New York; executive committee, Frederick W. Lehman, St. Louis; William O. Hart, New Orleans; Ralph W. Breckenridge, Omaha; Lynn Helm, Los Angeles; John Hinkley, Baltimore.

Tendencies in Legislation

In his annual address before the American Bar Association, President Charles F. Libby, of Portland, Maine, said that while the results of the efforts of legislative bodies are large in volume it is evident from the number of bills killed that discretion is used. "The situation indicates," he said "that we have drifted away from the viewpoint of the fathers, that the best government is the one that governs least, and have forgotten that wise legislation should always follow but not anticipate public sentiment." The speaker emphasized a point he has always insisted upon,—that the sole function of law and legislation is to secure to the individual the utmost liberty he can enjoy consistent with like liberty to others. Touching upon the subject of freedom, President Libby described the condition of affairs which has created the professional politician,—the lack of watchfulness by the citizens. "Caucuses and conventions," he declared, "have failed to express the wishes of the people because the majority of voters have neglected to participate in their action, and have left the field to those who make a profession of politics. If every citizen did his duty, there would be no place for the professional politician."

The speaker declared the necessity of facing serious questions:

"Has our dual system of government outlived its usefulness? Is our representative form of government a failure? Has the time come to establish a more centralized form of government at Washington by a transfer to the Federal gov-

ernment of important powers reserved to the state?" The proposed income tax amendment, he declared, must result in the impairment of the powers and resources of the individual states. The speaker held that if an income tax is ever a wise measure it should be reserved for great national emergencies in which the necessity of large additional revenue overrules all objections. Throughout a lengthy and elaborate argument and presentation of conditions, President Libby showed his opinion that the American people should not seek to get away from the intentions of the men who wrote the Constitution, or take any step toward a pure democracy instead of a republic.

President Libby set forth that the great number of immigrants received into the United States from all foreign countries has had a great deal to do with fostering the demand for change of government, the hostility for institutions. The work of bringing about uniformity of state laws, undertaken by the association and directly done by the conference of commissioners on uniform state laws, received praise from the lips of the president, who said: "It will, if persistently pursued, prove to be a bond of union between the states and a safeguard against radical changes in our present form of republican government."

Referring to the part the legal profession is to play in solving some of the questions to which he had made reference, President Libby said: "We cannot escape the responsibility of leadership if we would. In public affairs it is our function to lead, not to follow; to advise, not to obey. The future of this world rests largely upon the wisdom, courage, and statesmanship of our profession,—a wisdom which hastens slowly and knows the value of self restraint, a courage to withstand as well as to lead, a statesmanship which is guided by the experience of the past and sustained by an abiding faith in the future."

"At a time when speeches full of sound are being vociferously delivered and vociferously reported," says the Boston Transcript, "it is not always easy to hear, or even to find in print, a temperate and thoughtful address like that which was

given at Chattanooga before the American Bar Association by President Charles F. Libby, of Portland. All the more does it seem a duty and a pleasure to repeat his warning against the current delusions that all the ills of humanity can be healed by acts of Congress; that 'reform' of our institutions is needed, rather than reform in our standards of citizenship; that the time has come to establish at Washington a more centralized form of government by a transfer of important powers possessed by the states, and that it is every man's right to interpret the Constitution for himself without reference to the decisions of the courts. Such ideas flourish because a new nation of mixed characteristics is growing up in this country, and 'amateur statesmen, find plastic material in immigrants or sons of immigrants for whom our ideals and traditions have little meaning."

The Lawyer and the Community

President Woodrow Wilson, of Princeton University, in addressing the American Bar Association upon this theme, said in part:

"We are lawyers. This is the field of our knowledge. We are servants of society, officers of the courts of justice. Our duty is a much larger thing than the mere advice of private clients. In every deliberate struggle for law we ought to be the guides, not too critical and unwilling, not too tenacious of the familiar technicalities in which we have been schooled, not too much in love with precedents and the easy maxims which have saved us the trouble of thinking, but ready to give expert and disinterested advice to those who purpose progress and the readjustment of the frontiers of justice.

"So long as we have written constitutions, courts must interpret them for us, and must be the final tribunals of interpretation. I am speaking of the prominence and ascendancy of lawyers in the practical political processes which precede the judgments of the courts. Until the Civil War came and the more debatable portions of our fundamental law were cut away by the sword, the very

platforms of parties centered upon questions of legal interpretation, and lawyers were our guiding statesmen.

"Lawyers have been sucked into the maelstrom of the new business system of the country. That system is highly technical and highly specialized. It is divided into distinct sections and provinces, each with particular legal problems of its own. Lawyers, therefore, everywhere that business has thickened and had a large development, have become experts in some special technical field. They do not practise law. They do not handle the general, miscellaneous interests of society. They are not general counselors of right and obligation. They do not bear the relation to the business of their neighborhoods that the family doctor bears to the health of the community in which he lives. They do not concern themselves with the universal aspects of society.

"Our reforms must be legal reforms. It is a pity they should go forward without the aid of those who have studied the law, those who know what is practicable and what is not, those who know, or should know, if anybody does, the history of liberty."

Corporations Do No Wrong

In his address before the American Bar Association, President Woodrow Wilson, of Princeton University, declared:

"Corporations do not do wrong. Individuals do wrong, the individuals who direct and use them for selfish and illegitimate purposes, to the injury of society and the serious curtailment of private rights. Guilt, as has been very truly said, is always personal. You cannot punish corporations. Fines fall upon the wrong persons, more heavily upon the innocent than upon the guilty, as much upon those who knew nothing whatever of the transactions for which the fine is imposed as upon those who originated and carried them through,—upon the stockholders and the customers, rather than upon the men who direct the policy of the business. If you dissolve the offending corporation, you throw great undertakings out of gear.

"A modern corporation is an economic society, a little economic state,—and not always little, even as compared with states. Many modern corporations wield revenues and command resources which no ancient state possessed, and which some modern bodies politic show no approach to in their budgets. The economic power of society itself is concentrated in them for the conduct of this, that, or the other sort of business. The functions of business are differentiated and divided amongst them, but the power for each function is massed.

"Society cannot afford to have individuals wield the power of thousands without personal responsibility. It cannot afford to let its strongest men be the only men who are inaccessible to the law. Modern democratic society, in particular, cannot afford to constitute its economic undertakings upon the monarchical or aristocratic principle, and adopt the fiction that the kings and great men thus set up can do no wrong which will make them personally amenable to the law which restrains smaller men; that their kingdoms, not themselves, must suffer for their blindness, their follies, and their transgressions of right."

Efficiency of American Bar

In his address delivered before the American Bar Association, Col. W. A. Henderson, of Knoxville, said: "In my opinion, we have to-day in America as efficient a bar as has ever graced the world. As an old campaigner, pausing a moment on the wayside, watching the young soldiers of Themis as they march on to the firing line, my heart throbs with that hope which approaches foreknowledge, that advances are being continually made in industry, in ability, in honor, in trustworthiness, in eloquence, such as the world has never known. I believe that many or all of you have listened to arguments abler and more learned, and orations more eloquent, than were ever heard on the Nile, on the Euphrates, on the Hellespont, or on the golden Tiber."

St. Yves, the Lawyer Saint

In the course of his remarks at the annual banquet of the Iowa State Bar As-

sociation, Mr. J. B. Weaver, Jr., of Des Moines, said: "Let us turn our thoughts to the far eastern horizon, where, washed by the waves of the Atlantic, are the shores of Brittany. There, in the village of Tregier repose in a beautifully chiseled marble tomb the remains of St. Yves, the regularly canonized, the one and only, lawyer saint.

"Proud are we of him, for his was a beautiful and kindly life; and proud, too, of the one race that has had the courage, as well as the discernment, to enshrine a lawyer saint. Once a year there is a great fete in honor of his memory, to which the people gather from all over the province. For scores of years the famous procession has formed and marched to the tomb of the saint. I would have you listen to their chant as they march along:

'Sanctus Yvo Erat Breto;
Advocatus et non latro,
Res miranda populo!'

"Let us translate: 'Saint Yves was a Breton; a lawyer, and not a robber. A marvelous thing, the people say.' The impression implied in those words, unfair as it is, I regret to say is not entirely limited to Brittany, and now, my young gentlemen of the bar, one of your real duties is to so conduct your lives as lawyers as to hasten the day when none anywhere will longer regard as a phenomenon a lawyer who is not a rogue."

The Blending of the Roman and English Law

Honorable Hannis Taylor, who gave the annual oration before the South Carolina Bar Association a few months ago, in speaking upon the Roman and English law as great world systems, said:

A few years ago when it became necessary for me to make a careful analysis of the law system of the seventeen Latin-American states to the south of us, I began by dividing them into two groups. The first group consisted of the thirteen single states, of Gautemala, Salvador, Nicaragua, Costa Rica, Honduras, Panama, Uruguay, Chile, Peru, Ecuador, Colombia, Paraguay, and Bolivia. A student of comparative politics naturally contracts the constitutions of these thirteen sin-

gle states, in which the Federal idea does not appear, with those of the individual states of our Union of which they are conscious and substantial reproductions. These states have accepted the entire fabric of English constitutional law in the form in which it has been re-stated in the Declaration of Independence and in the Bills of Rights annexed to our state Constitutions. The second group consisted of the four Federal unions, entitled the United States of Mexico, the Argentine nation, the United States of Brazil, and the United States of Venezuela. The superstructures of these four Federal states approach very closely the prototype after which they were fashioned. Following our Federal Constitution, each embodies the "wholly novel theory" of a Federal government—strictly organized, and divided into three departments, executive, legislative, and judicial—operating directly upon the individual, and not upon states as corporations. Thus it appeared that English constitutional law, in its North American form, has been embodied in the outer shells or constitutions of Latin-American states, single and Federal, so far as it could be assimilated by Latin peoples who do not possess the peculiar forms of self-governing communities in which the English people have been trained in self-government.

But while that can be said as to the public law of these states, the fact remains that each and all of them are clinging with tenacity to their interior codes of private law all of Roman origin. The private law of all Latin-America is Spanish—in the form that law had assumed after its codification in the *Siete Partidas*, which became fundamental in the colonies as in the mother country—with the exception of Brazil, occupying an area not far short of the extent of Europe, whose civil law was drawn from Portugal. With that object lesson before my eyes I could not fail to see that within the last sixty years seventeen states have been formed to the south of us, in which the outer shell or constitutional law is English and the interior codes of private law are Roman. And of course I could not fail to see that the same thing is true of our state of Louisiana. From Louisi-

ana I passed to France, whose existing Constitution is the most perfect English Constitution in the world, outside of England, while the private law of France, as embodied in the Code Napoleon, is substantially Roman.

The same thing may be said of every state in Continental Europe having a parliamentary government. Wherever in the world of to-day you find a constitution of the parliamentary type it is an English Constitution, and all such in Continental Europe, Latin-America and Louisiana inclose codes of private law which are distinctly Roman. By that process of induction I reached the conclusion that out of this blending of Roman and English law, which has taken place since the French revolution, there is rapidly arising a typical state-law system whose outer shell is English public law, including jury trials in criminal cases, and whose interior code is Roman private law.

One of the best demonstrations of the force of this tendency is to be found in the new state system of Japan, whose Constitution is modeled after that of England, and whose private law has been remodeled upon the basis of Roman law as it exists in Germany. Thus it appears that after flowing in distinct channels for many centuries the two streams known as Roman and English law are now rapidly blending in a new combination which, as the typical state law system of the future, is to rest upon the strongest elements of both.

Trial by Jury of Civil Actions

Colonel John W. Hinsdale, of Raleigh, North Carolina, in his annual address before the North Carolina Bar Association, as its president, directed his remarks principally to the questions:

First, whether jury trial of civil actions should be abolished and, if so, what is the best substitute; and, second, how can the system of trial by jury be improved?

"The lawyer who knows he has a bad case which he ought to lose will not trust the judge. He prefers a more competent and reliable and trustworthy (?) arbiter. Short on facts, his only hope is a jury,

upon whose sympathy and prejudices he may play, in order to secure justice(?).

"The uncertainty of the issue of a jury trial has become proverbial. It is said to be the only thing which omniscience does not know, and it has been suggested that 'perhaps there is enough of the gamble, the chance of the die, in the outcome, to fascinate the student and to entice the practitioner into becoming its advocate.

"We cannot and must not ignore these oft recurring miscarriages of justice. They stand out in bold relief in our professional experience, and are known of all men.

"No, if the trial by jury in civil cases, with all its faults, is the best, let us retain it and, if possible, correct them. If it is not, let it be abolished and a better system substituted in its place. We owe it to succeeding generations to hand down to them the surest and safest administration of civil justice.

"What is the best substitute?

"I verily believe that all issues of fact, as well as of law, can be more safely, more certainly, more satisfactorily determined by one or three honest, impartial, able, learned, and experienced judges."

Col. Hinsdale next entered upon a profound discussion of the constitutional question of whether or not jury trial in civil causes in North Carolina may be abolished without an amendment, numerous supreme court opinions being quoted, the speaker taking the ground that it is certain that the right of trial by jury in a common-law action cannot be abolished except by constitutional amendment, and if the supreme court shall adhere to what he conceives to have been an erroneous construction of the Constitution, the right to trial by jury in an equity cause, without such an amendment, cannot be changed.

"It is not probable," said the speaker, "that our organic law will be changed in this respect in our generation, but I am convinced that the day will come when a different and better mode of trial of all civil actions will be adopted.

"The question, therefore, of abolishing the jury trial in civil causes can hardly be called a living practical one. Its discussion at this time is academical.

"If the jury system in civil actions, like the poor, is to be with us always, it is our duty to make it as perfect as possible. This brings me to the consideration of the improvements which should be made.

"A higher standard of intelligence should be adopted in the selection of jurors. None should be called upon to perform this important function of passing upon the liberties and rights of the citizens, but those who are well qualified for the duty. None but freeholders, as in the case of talismen, should be chosen, and preferably men of education, substance, and affairs. No one should seek the duty. None should shirk it. There is nothing really attractive in the *per diem*, and a juror to whom this is an inducement, is generally an unfit person."

Col. Hinsdale held that the province of the jury is to be the ultimate judges of the facts. "It is no invasion of this province, for an able and impartial judge," he said, "simply to assist them in coming to their conclusion. If truth is the desired goal, and it can be more certainly reached with the assistance of a judge whose experience enables him to materially aid in this ultimate purpose of trial, what is the objection? Is error more to be prized because the jury in their unaided gropings have fallen into it, than truth reached with the assistance of the court?

"The rule that the verdict of a jury must be unanimous has come down to us from our ancestors. This is its chief excellence. Eleven cannot truly solve the problem submitted to them, without the aid of the twelfth juror, because the truth reposes only in the twelve! In all bodies, executive, judicial, deliberative, legislative, a bare majority suffices. In the courts of common law and the courts of appeal in chancery, when the judges differ in opinion, that of the majority prevails. When in the House of Lords a peer is tried for crime, a bare majority of one is sufficient to convict; in the supreme court of North Carolina, a majority of one decides the question of law, and in the Supreme Court of the United States in equity causes the most difficult questions of fact, as well as of law, are decided by a majority of one."

Discussing the setting aside of verdicts, the speaker said:

"A great defect in our system of trials is the reluctance with which judges set aside the verdicts of juries. There is nothing sacred in the verdict of twelve fallible men. They frequently make mistakes. Of course, it is not a pleasant duty for the judge to tell the jury that they have blundered. The usual formula in denying a motion for a new trial is, 'I am averse to disturbing the verdict of a jury.' If it is wrong, it ought to be disturbed. The judge who said, 'It takes thirteen men in my court to deprive one of his land,' was eternally right."

Urged Stock Control Act

Congressman John J. Esch, of La Crosse, Wisconsin, speaking before the Minnesota Bar Association, outlined a plan for legislation to bring about Federal control of stock and bond issues by interstate carriers and the consolidation of railroads.

The views of Mr. Esch attracted particular attention because of the fact that he, with Representative Townsend, of Michigan, were most active in framing the first railroad regulation measures in Congress under the Roosevelt administration. The bill which they framed jointly was passed by the House, and, while it was not accepted by the Senate, many of its most important features were embodied in the law finally enacted by Congress.

Mr. Esch spoke at length of the practice of "stock watering" by railroads, and summed up his conclusions in suggesting possible remedies by congressional enactment as follows:

"That no common carrier shall issue stock, bonds, or notes payable more than one year from date of issue, except when necessary for the acquisition of property, extension or improvement of its line and facilities, the improvement or maintenance

of its service, or refunding its lawful obligations.

"That such issues shall be paid for at par, and if paid for in property or services the reasonable value thereof shall be fixed by the Interstate Commerce Commission.

"Make it unlawful to issue scrip dividend or stock dividend, or to pay any dividend except in cash derived from earnings.

"Require the written consent of the Interstate Commerce Commission to all proceedings looking to the consolidation, reorganization, or merger of carriers.

"Require every such carrier to make and file immediately a full, specific, and separate report to the Commission of every issue of stock, bonds, and notes or other evidence of indebtedness.

"Give the Interstate Commerce Commission visitatorial power in all matters connected with capitalization.

"Enforce these provisions with suitable penalties, including imprisonment."

Criminal Court Practice

In a recent address before the Georgia State Bar Association, Judge Hillyer, of Atlanta discussed what is an admitted weakness in practice before American courts. It was a subject with which experience on the bench naturally had made him familiar.

Summing up briefly the evils of criminal court procedure, Judge Hillyer defines the most important as being too much technicality, too little merit; delay, instead of promptness; punishing the poor, letting go the rich, criminal; archaic procedure ruled by irrelevant precedents.

The judge holds that in the reform of these evils lies the sole hope of rescuing the courts,—a fundamental of popular liberty,—from inefficiency and growing public contempt.



Law Schools

A department dedicated to the judges and lawyers of the future.

Association of American Law Schools.

The tenth annual session of the Association of American Law Schools convened at Chattanooga, Tennessee, on August 29th.

J. C. Townes, president of the University of Texas, and also president of the organization, read a paper on "Organization and Operation of a Law School." In part, he said: "From discussions which occur from time to time among the teachers of law, it might be well concluded that three distinct ideas exist as to what constitutes a law school. The first, that it is an institution in which law is taught; second, an institution in which law is studied, and third, an institution in which law is both taught and studied."

He declared the most important matter in the law school is the quality of the teaching and studying done, and this depends largely upon the character and qualifications of the faculty; and defined what he regarded as properly covering this point. "Every law teacher, to be successful," he said, "should be an enthusiast, filled with an absorbing love for the law in general and the topics which he teaches in particular."

Discussing the question of text-books, Mr. Townes said that extreme undue emphasis on the teaching side leads to the exclusive lecture method, eliminating text and case books alike. But neither of these extremes, he believed, was tolerable. The middle course, he asserted, blends earnest research and careful thought by the pupil with skilful suggestion and illuminating exposition by the teacher.

Dean Ervine, of Cornell University, said: "I believe law schools should af-

ford not alone facilities of studying law; but youth is entitled to be protected from youth. They are not all going to devote themselves to study; many will test the ability, the energy, and wisdom of the instructor. We must protect the earnest, serious student. The worthless will go overboard. It is altogether a question of balance."

Dean Barker, of the University of Illinois Law School, paid his respects in no uncertain terms to law schools of state universities and "other so-called schools" for not having a higher course. He thought a law student should be better equipped than with a desire to become a lawyer. He advocated a high-school diploma before entering a law school. The dean criticized so-called night schools, which advertised a full law course, to the detriment of the legal profession and legal education. He wanted to see the law schools generally placed upon a higher plane, and send out graduates who would reflect the honor of the school in their practice.

Dean Hastings, of the University of Nebraska, believes in adopting a greater uniformity of studies, and that law students should be equipped along such educational lines as would enable them to get the best out of the course of study.

R. G. Anderson, of the Law Department of Trinity College, North Carolina, followed Dean Barker, with a vigorous appeal for the so-called night law school. He said, notwithstanding the fact that he came from such an institution, he had the highest regard for the man, whether he was the "truck driver or pig sticker," referred to by Dean Barker, who worked by day and studied by night; he knew of eminent lawyers who had completed their law courses by

studying at night schools, they not being able to take a course in some higher college spoken of by the gentleman from Illinois. Mr. Anderson stated emphatically that he knew lawyers who graduated from night schools who knew more law in an hour than graduates of higher schools knew in a week.

E. G. Lorenz, Dean of the Department of Law of George Washington University, wanted teachers in law schools who could not only anticipate matters in the curriculum but others with whom the student was brought in daily contact. The rapidly changing conditions in all epochs required men in teachers' places who were men, and could command the respect and admiration of their students. Professor Lorenz believes if millionaires would create chairs of research in several universities, for the purpose of conducting that class of legal research, the legal profession of the country would be vastly benefited.

Dean William Draper Lewis, of the University of Pennsylvania, read a paper upon "The Honor System of Conducting examinations in Law Schools." Among the forcible things he said, may be quoted the following:

"It is the duty of the law faculty to keep improper persons from the bar. A person who will cheat in examinations is not a fit person to be a lawyer. It is the duty of a law faculty to do all in their power to prevent such a person from being graduated."

"Another principle which should be borne in mind is that human character grows in vice as well as virtue by what it feeds on. The man who cheats in an examination by the very fact that he has cheated makes his possibilities for evil greater. Furthermore, the man who cheats in an honor system does an act the effects of which are more harmful to him than if he had cheated in an examination conducted under the monitor system."

An adverse report was made by the committee to which was referred the project of establishing a section to be known as the section of legal writers, and designed to promote the best method of legal writing and the advancement of American jurisprudence.

Three-Year Course for Law Students.

"My advice to students," said Judge W. O. Hart, of the New Orleans bar, who is chairman of the section of legal education of the American Bar Association, "is to go to a law school, to take the three-year course, to study in an office in the meantime, to watch the actual trial of cases, and, whether they are required to do so or not, to take an examination before a state board, before letting themselves feel that they have finished the study of law. If they find at the end of three years they are not fully equipped and informed, they should study longer, and not be too hasty in their efforts to become a member of the bar."

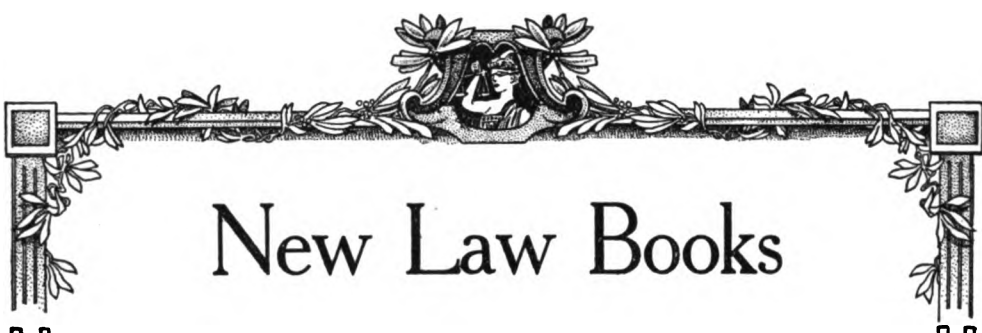
New System of Moot Court Trials.

Under the system now in vogue in most of the law schools of the country, a statement of all the facts of the case is supplied both the attorneys for the plaintiff and defendant, with the result that each side is thoroughly familiar with the details of the opponent's case.

Mr. John K. M. Ewing, of the New York bar, has conceived the novel and ingenious plan of furnishing each of the opposing counsel only the facts supposed to be known by them, together with a list of their respective witnesses. Each witness is separately furnished a statement of the facts supposed to be within his knowledge. In this way the actual conditions encountered on the trial of a cause are provided; the moot court becomes practically a real court, and the student acquires most valuable experience.

New Harvard Law Course.

By a recent vote the corporation established a fourth year of work, leading to the degree of J. D. (Juris Doctor). This will be conferred on graduates of the Harvard Law School, and those of other schools, qualified to be members of the Association of American Law Schools, upon one year's residence after receiving the bachelor's degree.



New Law Books



"Questioned Documents."— A Study and Analysis of Questioned Documents, with an Outline of Methods by which the Facts may be Discovered and Shown. By Albert S. Osborn. With an introduction by Prof. John H. Wigmore. (Lawyers Co-operative Publishing Co.) Cloth. \$5.25 delivered.

This work has grown out of actual cases involving the questions discussed, and has been tested and amended by application to many such cases in which the author has testified as an expert on handwriting. Psychology, mathematics, and literature, as well as chemistry, photography, and microscopy, are made to serve. "It abounds," says Prof. Wigmore, "in the fascination of solved mysteries and celebrated cases. And it introduces us to the world-wide abundance of learning in this field."

The purpose of the book is to assist in the discovery and proof of the facts in any investigation or legal inquiry involving the genuineness of a document.

The vast increase in the use of documents is one of the characteristics of modern civilization, and, as all such documents are subject to forgery, spurious papers are constantly being produced. If the interests of justice are to be fully served the lawyer should know, at least in a general way, what initial steps to take in order to test the genuineness of an instrument which is submitted to him as fraudulent. Questions of this character may arise in the midst of a trial when a prompt decision is imperative, and immediate knowledge is doubly valuable.

Mr. Osborn's book is especially designed for the use of the lawyer, but it will also prove useful to the banker, the

business man, or to anyone who may be called on to investigate the genuineness of a document. As stated by the author in his preface, "Definite instructions regarding the investigation of the several classes of questioned documents are given; the chapters on photography and the use of the microscope outline specific methods and give practical directions that in any case can at once be put in operation; the chapter on typewriting as evidence is the result of study, experience, and investigation in this important new field; the method outlined for the measuring and recording of ink tints makes it possible in many cases to present conclusive testimony on the subject of the age of writing; and the special application of stereoscopic photography to the subject of questioned documents makes it possible to present delicate and almost hidden facts in a most conclusive manner."

"Handbook of International Law."— By George Grafton Wilson (West Publishing Company, St. Paul, Minn.) Buckram. \$3.75.

Since the first Hague Conference there has been a greater development of international law than during the three preceding centuries. Mr. Wilson, who is professor of international law at Brown University and lecturer on the same subject at Harvard University and the United States War College, has taken an active part in the recent peace conferences, and his book has the advantage of his personal acquaintance with the progress of current movements along these lines.

The work is a valuable addition to the "Hornbook Series." It sets forth as far as space permits the historical develop-

ment of the principles of international law. Owing to the numerous and recent modifications of earlier views, particular attention is also given to those principles as they are at present interpreted. The book will serve the needs of the practising lawyer in giving up-to-date information, and it is particularly adapted to meet the requirements of teachers and students of the subject.

Collier on "Bankruptcy."—8th ed. 1 vol. \$7.50.

Remington on "Bankruptcy."—Vol. 3. Supplementing and bringing down to date the 2-volume set. Buckram, \$6.

Green's "Cases on Carriers."—(American Case Book Series.) Buckram, \$4.

"Criminal Evidence."—By H. C. Underhill. 2d ed. 1 vol. Buckram, \$7.50.

Reese's "Texas Digest."—Supplementing Green and Batts' Buckler. 3 vols. \$25.

"Cases on Wills."—By George P. Costigan, Jr. (American Case Book Series.) Buckram, \$4.50.

Recent Articles in Law Journals and Reviews

Animals.

"Cruelty to Domestic Animals."—35 Law Magazine and Review, 437.

Arbitration.

"Compulsory Arbitration of Strikes and Lockouts."—17 Case and Comment, 170.

Aviation.

"Aviation and Wireless Telegraph, etc."—46 Canada Law Journal, 480.

Bankruptcy.

"Bankruptcy Law Amendments."—43 Chicago Legal News, 23.

"Trust Property and Bankruptcy."—29 Law Notes, 237.

Bar Associations.

"International Law Association."—45 Law Journal, 521.

Boycotts.

"Principles Applicable in Determining the Lawfulness of a Boycott by a Labor Union."—17 Case and Comment, 159.

Bureaucracy.

"The Dangers of Bureaucracy."—29 Law Notes, 240.

Civil Responsibility.

"The Modern Conception of Civil Responsibility."—45 Law Journal, 528.

Constitutional Law.

"The Constitution and the Veto Resolutions, March, 1910. (Power of Eng-

lish House of Lords over Money Bills.)"—35 Law Magazine and Review, 417.

"Conflict of Power. (Between State and National Governments.)"—3 Lawyer & Banker, 239.

Corporations.

"Is National Incorporation Wise and Constitutional."—3 Lawyer & Banker, 251.

"Drafting a Uniform Foreign Corporation Law."—41 National Corporation Reporter, 53.

Corpus Juris.

"American Editorial Comment on the *Corpus Juris* Project."—22 Green Bag, 457.

Courts.

"Does the Court Make or Interpret the Laws?"—43 Chicago Legal News, 20.

"Remodeling the Supreme Bench."—41 National Corporation Reporter, 52.

"One Final Court of Appeal for Australia."—35 Law Magazine and Review, 406.

Criminal Law.

"The Defense of Insanity in Criminal Cases."—3 Lawyer & Banker, 260.

"Suggestion as a Criminal-Dynamic Force."—3 Lawyer & Banker, 269.

"Mr. Churchill's Proposals. (Penal Reform)"—129 Law Times, 314.

"The Menace of the Police—The Delays of Justice."—40 National Corporation Reporter, 984.

"Coddling Criminals. (Parole System.)"—41 National Corporation Reporter, 41.

"Borstal. (Juvenile Offenders.)"—29 Law Notes, 242.

"The Writ of *Venire de Novo* and the Court of Criminal Appeal."—74 Justice of the Peace, 363, 374.

"Antiquities of the law.—No. 5."—29 Law Notes, 239.

"Anglo-American Philosophies of Penal Law. II. Punitive Justice."—1 Journal of Criminal Law and Criminology, 354.

"Has Crime Increased in the United States Since 1880?"—1 Journal of Criminal Law and Criminology, 378.

"Criminal Law Reform."—1 Journal of Criminal Law and Criminology, 386.

"Tests of Criminal Responsibility of the Insane."—1 Journal of Criminal Law and Criminology, 394.

"Treatment of the Released Prisoner."—1 Journal of Criminal Law and Criminology, 403.

"Principles of Police Administration."—1 Journal of Criminal Law and Criminology, 411.

Drains and Sewers.

"Highway and Main Road Drains."—74 Justice of the Peace, 374.

Evidence.

"The Admissibility of Evidence in Revision Courts."—74 Justice of the Peace, 397.

Executors and Administrators.

"Executors' Commission."—32 Australian Law Times, 2.

Food.

"A Plea for a Legal Standard under the Sale of Food and Drugs Acts."—35 Law Magazine and Review, 398.

"Horseflesh as Food."—74 Justice of the Peace, 386.

Husband and Wife.

"Right of Wife to Pledge Husband's Credit."—43 Chicago Legal News, 6.

Injunction.

"The Use and Abuse of Injunctions in

Labor Controversies."—17 Case and Comment, 173.

Insurance.

"Validity of Indemnity Insurance Contracts."—46 Canada Law Journal, 484.

Land Titles.

"Examination of Titles to Land."—71 Central Law Journal, 93.

Master and Servant.

"The Pay Check System."—3 Lawyer & Banker, 277.

"Employers, Employees, and Accidents."—45 Law Journal, 527.

"Employers' Liability and Compensation Legislation."—17 Case and Comment, 167.

"Employers' Liability."—41 National Corporation Reporter, 41.

"The Employer's Liability Problem."—3 Lawyer & Banker, 292.

"Employers' Liability Here and Abroad."—42 Chicago Legal News, 416.

"Servant's Assumption of Risk of Master's Breach of Statutory Duty."—71 Central Law Journal, 131.

Patents.

"The Needed Reform of Patent Procedure."—43 Chicago Legal News, 7.

"The Patents and Designs Act, 1907."—35 Law Magazine and Review, 385.

Practice and Procedure.

"A Practical Program of Procedural Reform."—22 Green Bag, 438.

Prize.

"The Declaration of London. (Statement of Principles Which should Govern International Court of Appeal in Matters of Prize, in Absence of Treaty Stipulations.)"—45 Law Journal, 523.

Taxes.

"Inheritance Taxation."—71 Central Law Journal, 75.

Telegraphs.

"Aviation and Wireless Telegraph, etc."—46 Canada Law Journal, 480.

Trials.

"The Lawyer's Words."—17 Case and Comment, 179.

Waters.

"The Protection of Our Water Supplies."—74 Justice of the Peace, 362.



Quaint and Curious

Odd legal incidents gleaned from modern chronicles.

□ □

Cheap Rent.—A poetic nature and a faith in future clover crops are alike shown by a Michigan man who has leased a lot of land for school purposes for a period of ninety-nine years, the only rental being one clover blossom per year, which is to be picked on the lot and given to himself or his heirs.

Put His Dislike on Record.— There has been filed at Pottsville, Pennsylvania, the oddest deed ever entered at the recorder's office. The deed conveys land for the erection of a new church, but stipulates that when the church is erected, a certain pastor shall be forever debarred from holding an office or preaching a sermon in the church, and that a specified elder shall also be debarred from holding an office.

The Color of a Corporation.— In a case decided recently in West Virginia, the defendant had sold the plaintiff a small building lot, one of a group which he owned. The sale had been made with a stipulation that no land in the division should be sold to a colored person, so the buyer was highly incensed when shortly afterward the remaining lots were all sold to a corporation made up entirely of negroes.

A suit for breach of condition was brought immediately, but the defendant justified his action on the ground that the land had not been sold to a colored person, but to a corporation. His opponent, however, replied with the remarkable assertion that since a corporation is a person, then if its members were all negroes, it could with great propriety be called a colored person.

It looked for a while as if this argument might win the day, until the defendant presented the following hypo-

thetical case for the consideration of the court: "If the corporation had been composed half of white men and half of negroes, could it then have been considered a mulatto?"

The plaintiff lost his case.—American Home Monthly.

The Evasive Corporation.—How he could imprison a corporation was a question which, according to the Sun, recently confronted Judge Pritchard in the criminal court at Indianapolis, during and after an argument on a motion to quash in a case against the English Woolen Company, charged with having used the union label on its goods without the right to do so.

The motion to quash set out that no corporation has ever been imprisoned in this or any other state, and that it would be impossible to imprison such an intangible thing.

Attorney C. C. Pettijohn, for the defendant, also raised the question that the sheriff of Marion county could not collect *per diem* for the "feed and keep of a corporation."

Judge Pritchard said he considered the statute as not applying to a corporation, inasmuch as it seemed mandatory to him that the defendant, if convicted, must be imprisoned in the penitentiary, or, if fined, imprisonment in the jail or workhouse must be added.

A Summer Snowball.—A short and very much excited gentleman, says the Washington Star, recently entered Assistant United States Attorney Weyrich's office, and exclaimed:

"Make me a warrant and make it for me quick."

"What's the matter?" inquired Mr. Weyrich.

"I was hit with a snowball," was the astounding reply.

"When?" inquired Mr. Weyrich.

"This morning. Make me a warrant, quick."

Mr. Weyrich slipped a little farther behind his desk after satisfying himself that there were more than two policemen in the corridor just outside the door.

"How could that be?" he inquired, soothingly. "This is August. There is no snow."

"That is foolish," said the short gentleman. "It was a snowball made of ice and strawberry flavor. It hit me in the face and made a big splash. Make me a warrant."

Sentences of "Floating Court."—United States District Judge Cushman, who has been conducting a "floating court" aboard the revenue cutter Rush, has completed his work along the Aleutian peninsula, and is on his way back to Seward.

While at Unalaska the court disposed of the cases of three Japanese schooners, seized by revenue cutters for violations of the government fishing and sealing regulations.

Twenty-eight Japanese, the entire crew of one schooner, were sentenced to serve three months in jail at hard labor for illegal sealing in the waters of the Pribylof group. Another schooner was fined \$400 for illegal fishing, and a third was fined \$500 for having failed to clear the customhouse when ordered.

The Rarity of Concord.—Lumpkin, J., in *Southern Cotton Oil Co. v. Skipper*, 125 Ga. 370, says: In one respect this case brings to mind the words of Juvenal: "*Rara avis in terris, nigroque simillima cygno.*" Its quality of rarity consists in the fact that counsel for both sides concur in the opinion that the trial judge erred in giving to the jury a particular charge, and that a new trial should be granted. In this unusually harmonious view we concur with them. Thus is furnished the spectacle (more rare indeed than a black swan) of a court of last resort being able to render a judgment which, as to one point, at least, meets the concurrent views of counsel for both litigants.

Cited from the Oldest Law Book.—A brief filed in the Supreme Court of the United States, by a colored attorney, in opposition to a motion to dismiss the appeal taken by him, concludes as follows:

"The plaintiff, therefore, having, in our judgment, indisputably and incontrovertibly established each proposition herein, and knowing that this court is the highest court of justice in this great government, ordained 'to establish justice, insure domestic tranquillity,' etc. (preamble of Constitution of the United States), and believing also that from many of the decisions already rendered, that it delights 'to keep judgment and to do justice,' etc. (Isaiah, lvi. 1, Micah, vi. 8, Rom. xiii. 1 to 7), upon the record, in causes brought before it, and for purpose; and, we trusting, depending, and relying upon God, from whom cometh our help (Ps. cxxi. 1 and 2), and who is the source of all our strength (Ps. xxvii. 1), the God of justice; and believing further that the record and the law sustain our contention, and that this court has the unqualified right to entertain this writ, and then to re-examine the judgment of the state court, and thereafter to affirm, revise, or reverse the same, as, in its wise judgment, justice demands. Therefore we do now, in conclusion, state that in our humble judgment, that the said motion to dismiss the writ ought not to be granted; but to the contrary, that the relief duly sought for by plaintiff should be granted."

The Woman Lawyer's Hat.—"Supreme Court Justice Goff," says the Brooklyn Eagle, "is a stickler for the dignity of the court, and the male lawyer who infringes on the court's almost transmarine conception of that dignity is a very unlucky lawyer indeed. But when the justice ordered a woman lawyer to take off her hat in the court room, he went further than he has ever gone in the line of exact prescription of costume and manners for those who practice before him.

"The right of a woman to wear her hat, and anywhere and everywhere, in the dining room, at public euchres, in theatres when it does not bar the view of others, in women's club meetings and in the church at public worship, is socially

conceded. The older ritual of the Jews, indeed, compels women in synagogues to bare their heads, and men to keep their hats on. But St. Paul, in the first Epistle to the Corinthians, gave a semi-ecclesiastical indorsement to our modern custom, at least, so far as churches are concerned, saying:

"Every man praying or prophesying, having his head covered, dishonoreth his head. But every woman that prayeth or prophesyeth with her head uncovered dishonoreth her head; for that is even all one as if she were shaven."

"Whether, in the face of custom built upon such authority, and practically universal, a judge has a right to demand the removal of a woman lawyer's hat in court, is a serious question. He has a right to make all reasonable regulations. But he would probably have no right to insist that every man appearing before him should wear a crimson necktie. Unfortunately, the woman lawyer at whom the Goff pronunciamiento was aimed, obeyed at once, and no test case will be made. Her hair was in perfect order and she chose not to raise the issue. Perhaps in the near future it will come up and be decided. Woman at the American bar has not fully established her status yet."

The query propounded by Judge Goff at the time of the occurrence seems to us a conclusive argument on this question. "Are you any different from any other attorney?" said the court. "Why don't you remove your hat?"

An Eccentric Definition.—Eminent lawyers are frequently amazingly ignorant on all subjects other than law. A good story is told of a judge who once interrupted a well-known patent counsel: "I am sorry to stop you; but while I understand the term 'eccentric' when applied to persons, I must confess that I am quite at a loss to appreciate its meaning when applied to things." The learned counsel looked a little puzzled for a moment, and then amid considerable merriment evoked by his reply, said: "An eccentric, my Lord, is a circle whose center is not in the center." And a precious good rough-and-ready definition too.—Law Notes.

Refused to Travel Out of the Record.—Lamm, J., in *Story v. Story*, 188 Mo. 110, says: "In the consideration of this case, we trust we have given proper weight to the *argumentum ad hominem* addressed to us *ore tenus*, and outside the record, by the earnest and eloquent counselor appearing for respondents, to the effect (1) that it was his first case in this court, that (2) he had a contingent fee of respectable size in the final result (and needed the fee), and (3) that his clients, the daughters of testator, were goaded by penury and like misfortune into earning a scant and hard living by manual labor in the fields of Stoddard county, and hence he was anxious to win his case.

"Avowing a natural sympathy for the persuasive conditions indicated above, yet it would seem that we are wisely precluded from giving any consideration to aught but the law of a case, and to the application of that law to the cold record facts. Hence we must gently but firmly decline to follow the attractive lead suggested by respondents' counsel."

A Preponderance of Evidence.—This took place in Marion county. It was before a justice of the peace. Mr. C. and Mr. K., two of the legal fraternity at Peabody, were trying a case before a justice, who was not remarkable for his knowledge of the law. This was his first case. In the progress of the trial Mr. C. stated a certain proposition, and claimed it to be the law of the state. Mr. K. in turn stoutly disputed it.

"If it please the court, please swear me," said Mr. C. The oath was duly administered, when the attorney went on to reiterate his proposition, and to state that it was the law of Kansas.

"What are you doing?" asked the astonished Mr. K.

"I am swearing to the law as an expert," quickly responded Mr. C., "and unless you swear it is not, I shall claim judgment of this court."

As Mr. K. refused to swear, the justice rendered judgment for Mr. C.'s client, grandly remarking that "as Mr. K. would not swear to the contrary, the preponderance of the evidence is with Mr. C."

Women and Trousers.—Governor Stubbs, of Kansas, received a letter from a widow asking permission to wear men's trousers while at work at her home. The letter states the widow is supporting a large family, which necessitates outside work, and that in wearing skirts she is badly handicapped. The communication was turned over to the attorney general, and that official ruled there was no law prohibiting a woman wearing man's trousers,—especially if she were the head of the house.

This incident led the Kansas City Journal to make the following observations: "When a Kansas woman addressed a letter to the attorney general of the state, asking him if there was any law forbidding her wearing trousers, the matter caused considerable comment. The woman was a plain, sensible person, who worked hard to support herself and children on a small farm, and in this employment she found skirts encumbering and awkward. She decided that she could wear trousers with comfort and convenience, provided the law would permit.

"There is something fine about this Kansas woman's position. She did not simper and treat the subject frivolously, but went straight to the point. There is no hint of immodesty or 'manishness' about the proposition, and it certainly is not a joke with her. And it is gratifying to note that the attorney general assured her that she could wear trousers if she cared to do so, without offense, either legal or ethical."

This question has recently received consideration in an English court. "A girl," says the London Law Journal "when arrested on a charge of theft, was in male attire, and when before the North London magistrate the other day, inquired whether there was a law to say what a woman should wear. There are now no sumptuary laws, and fashion alone rules the dress of the sexes; but it has been usual to treat as idle and disorderly persons those who go about in the garb of the other sex. There is said to have existed at common law the offense of 'travesty,' *i. e.*, the wearing by one sex of the garb of the other; but we can find no authority or case or statute that the wearing of the attire of the op-

posite sex can of itself now be treated as a criminal offense, though the disguise may afford some indication that the wearer is up to no good."

Not Found in the Book of Forms.—In an action brought by the trustees of certain Masonic orders, to restrain the operation of machinery in the immediate neighborhood of the lodge rooms, defendant's counsel in his answer makes the following eloquent presentation of the facts: "Plaintiffs, as individuals or representatives, have no right to assume or claim an exclusive right to that part of the city, to use the agencies of the law to paralyze the hand of labor or the march of modern progress. If they want silence and a solitude suited to their tastes, let them return to the historic places of their origin, and then the plains and forests of Palestine will resound with their music, oratory, and magic rites; but in the name of American thrift and progress, modern civilization and enterprise, and even common decency, let them endure a little of the noise of industry, the whirl of busy wheels, the hammer of the skilful mechanic, and the music of throbbing machinery; and let them rest from frivolous displays of bloodless swords, dustless uniforms, brazen music of hired bands, and harmless imitations of the glorious knights of old whose deeds of heroism ring as sweet music from the pages of history, in their valiant defense of Christian pilgrims to the holy shrine. These toy shows and showmen should step aside, and let the procession of American progress pass by."

Alleged Better Law.—A declaration recently filed in the circuit court of a county in Tennessee, in an action brought to recover for personal injuries, contains the following unusual averment: "All of this injury and damage to the plaintiff, J. H., occurred in the state of North Carolina on or about June 15, 1909, and occurred under the statute laws of Tar Heal State, North Carolina, that existed at the time of the accident, which the statute provides that they are liable under the conditions alleged above, which is a much better law than the Tennessee law governing such cases."

Judges and Lawyers

Personal items concerning Bench and Bar.

Hon. James Harvey MacLeary

An active member of Porto Rico's Supreme Court.

Honorable James Harvey MacLeary is a Tennessean by birth, a Texan by adoption, and a Porto Rican by preference. He was born near Carthage, Tennessee, on July 27, 1845. Later his father removed to Harvey, Texas. In 1861 Judge MacLeary left college and enlisted in the 5th Texas Cavalry, in which he served until 1865 with high honors, participating in all the battles in which the regiment was engaged, and being four times wounded.

In 1866 he entered Washington and Lee University, graduating in 1868. In 1869 he was admitted to the bar and began practice in Columbus, Texas, removing later to San Antonio. He served in the house of representatives and senate of Texas and as attorney general and Presidential elector.

In 1886 he was named one of the justices of the supreme court of Montana, but resigned the post on account of the rigorous climate.

From 1896 to 1898 he was general counsel for the Postal Cable Companies

of Texas and Louisiana.

In 1898 he was commissioned Inspector General of Volunteers, and participated in the campaign ending with the fall of Santiago. When General Wood was named Governor of Cuba he asked

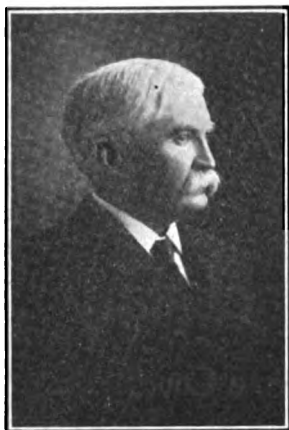
Judge MacLeary to accompany him, and gave him the post of Inspector of the Department of Charity, and in February, 1901, he came to Porto Rico in response to a cable from Secretary Hunt. He became assistant secretary of Porto Rico, and was later appointed by President Roosevelt to the Porto Rican Supreme Bench, which position he still holds.



HON. JAMES HARVEY MACLEARY

Judge MacLeary is a cultured, accomplished gentleman of strong character and firm convictions. In a series of able decisions he has done much toward building up in Porto Rico an ideal system of justice. He enjoys calling himself a Porto Rican and repeatedly has manifested his desire to pass the rest of his days there. He is deeply concerned in the intellectual and material progress of his adopted home.

New Mexico's Attorney General



HON. F. W. CLANCY

Honorable Frank W. Clancy, Attorney General of the territory of New Mexico, was born in Dover, New Hampshire, on the 15th day of January, 1852. He went to Washington, District of Columbia, with his par-

ents in 1866, where he was a student at the Columbian University, now George Washington University, and later, was employed for several years in the office of William E. Chandler, afterwards Senator from New Hampshire, and as a clerk in the office of the United States Coast Survey, from which he resigned to go to New Mexico in 1874, after having graduated from the Law Department of the Columbian University, and after admission to the bar of the District of Columbia. He was admitted to practice in New Mexico in September, 1874, and has made his home in New Mexico from that time to the present, although absent from the territory from the early part of 1877 to the summer of 1879, during the greater part of which time he was secretary for Mr. Richard C. McCormick, who was Assistant Secretary of the Treasury in 1877, and Commissioner General to the Paris Exposition in 1878. Upon Mr. Clancy's return to New Mexico, in 1879, he became clerk of the supreme and district courts at Santa Fe, which positions he held until March 1883, resigning to resume the practice of law as a member of the partnership of Catron, Thornton, & Clancy. In 1887, this firm was succeeded by Catron, Knaebel, & Clancy, which continued until 1891, being then dissolved by agreement. In January, 1892, he removed to Albuquerque, which has remained his resi-

dence to the present time. In 1889, he was a member of a convention called under authority from the territorial legislature, to frame a state constitution for submission to Congress; in 1898, he was mayor of the city of Albuquerque, and in 1901 was appointed territorial district attorney, which position he held until 1909, when he was appointed to his present position. He has always been a Republican in politics.

Prof. Thomas H. Street, of the Law Department of the University of Missouri, and Washington L. Goldsborough, of Maryland, have been appointed as the two American representatives on a committee to prepare a complete code of laws for the Philippine Islands.

Goldsborough has been in the Philippines since the Spanish-American war, having given up the practice of law in Maryland to go to the front as the captain of a company of volunteers. Since that time he has been a judge of two different insular courts.

The work of codification will require several years. Each member of the committee is to receive a salary of \$6,000 per annum.

Judge L. M. Keys, of Hobart, Oklahoma, is one of the most prominent lawyers in that state. He removed to the territory in 1889 and has served as city attorney of Oklahoma City, assistant United States attorney, and was Kiowa county's first county attorney. In the course of his legal career, out of fifty-five murder cases which he has tried he has been wholly successful in forty-nine of them and completely lost none. Judge Keys has a large private practice, being counsel for several railroad companies and banks. At the recent Republican primaries he was nominated for justice of the supreme court for the fifth judicial district by a large majority.

Circuit Judge A. J. Vinje has been appointed to the bench of the supreme court of Wisconsin, to fill the vacancy made by the resignation of Justice Dodge.

Active Members of the Profession in the Philippines



EDMOND BLOCK
ILOILO, P. I.

Mr. Block is a member of the law firm of Rothrock & Block, of Iloilo, and is assistant general attorney to the Philippine Railway Company. He was for some years a valued member of the staff of the attorney general of the Philippine government, where his work attracted the attention of the general attorneys of the company. His partner, P. Q. Rothrock, is the pioneer American attorney of Iloilo, and is heavily interested in the sugar lands on the island of Negros.



JOHN BOARDMAN
ILOILO, P. I.

Before coming to the Philippines, years ago, as captain and adjutant of the 26th Infantry, United States Volunteers, Mr. Boardman practised law in the city of Boston. He is a graduate of both Harvard College and Harvard Law School. He represents in a legal capacity many of the British, German, and Chinese banking, importing, and exporting houses of Iloilo, and has had much to do with incorporation business.



COL. J. N. WOLFSON
MANILA, P. I.

Colonel Joseph N. Wolfson was a practising attorney in New Orleans when war with Spain was declared. He enlisted in the 12th Infantry, and went to Manila with the regiment. He saw a good deal of active service and hard fighting, and later was assigned to duty in the judge advocate general's office. On leaving the Army he commenced the practice of law in Manila, where he has met with marked success.

Edwin Walker, dean of the Chicago bar and one of its foremost corporation lawyers, died recently at his summer home in Wequetonsing, Michigan.

Attorney Walker gained distinction in his profession through his participation in great railroad litigation and in other corporation cases. He was special counsel for the United States in the conspiracy case against Eugene Debs in the railroad strike of 1894. Before his practical retirement from practice in 1903, he had become eminent as an authority on cor-

poration law. He was widely known and had many warm friends.

Chicago had been Mr. Walker's home since 1865. He came to the city when the Cincinnati, Richmond, & Logansport Railroad, of which he was general counsel, moved its general offices here and merged into what was known as the Chicago & Great Eastern Railroad. When this road was merged with the Pennsylvania lines, in 1870, he retained his legal connection with the consolidated lines until 1883.

Secretary of Public Instruction in the
Philippine Islands.



HON. NEWTON GILBERT

Honorable Newton W. Gilbert, a lawyer by profession, holds the portfolio of secretary of Public Instruction in the Philippine Commission. In an article in the Manila Times, Mr. Gilbert states: "Perhaps in

no respect have conditions in the Philippine Islands been so changed within the past decade as they have in the matter of public instruction. . . . Almost the first statement made by the Commission sent to inaugurate civil government, was that education should be secularized and made general throughout the Archipelago; that the public should be taught the theory of individual rights and the means whereby these rights might be obtained and safeguarded; that an intelligent public opinion should be created for the guidance of those holding public office; and that as they advanced in capacity the government should more and more be intrusted to the people of the islands. This is the task which the schools encountered.

"The Commission authorized the employment of a thousand American teachers. It was decided that all instruction should be given in English, and the teachers were sent throughout the islands. . . . Instruction in the provinces was at first largely confined to primary subjects, and Americans did the actual work of teaching. By degrees, however, Filipino teachers have been trained, and primary instruction is now almost entirely given by them, the Americans being used to supervise the work.

"There are at present thirty-five high schools in the islands, located, as a rule,

in the provincial capitals. . . . There are few colleges in the islands, and the professions will for many years be filled with men and women who have completed only the high-school course."

United States District Attorney Henry A. Wise has a totally blind assistant in his office. Raymond A. Brown, a graduate of the Harvard Law School in the class of 1910, is the young man. Mr. Brown has been blind since the age of eight. His duties consist in brief making, for which his secretary reads aloud the papers while he makes the necessary deductions and afterward either dictates to a stenographer or operates his own typewriter, at which he is an expert. Mr. Wise said that his new assistant had proved himself very capable.

A. Bleeker Banks, formerly mayor of Albany, died at his summer home at Bar Harbor, Maine. He was seventy-two years of age and had been in ill health for a long time. He was born in New York in May, 1837. He was elected a member of assembly by the Democrats in 1862, and served in the state senate from 1868 to 1871. He was mayor of Albany from 1876 to 1878, and was re-elected in 1884, serving two years more. He was head of the firm of Banks & Company, law-book publishers.

The new president of the American Bar Association, Edgar H. Farrar, of New Orleans, is one of the leading lawyers, not only of his own state but of the country. He has been in the active practice of law for over thirty-five years, and during that time has handled with marked success litigation of every character and of great magnitude. Mr. Farrar, while always taking an active interest in public affairs, has steadfastly refused to accept any political office, but as chairman of the Louisiana tax commission, appointed by Governor Blanchard in 1907, he evolved a plan for the scientific assessment and levy of taxes, which, if adopted in Louisiana, will greatly advance the economic and financial conditions of his state.



The Humorous Side

A laugh is worth a hundred groans in any market.—Charles Lamb

At What Bar Did They Practice.—A recent advertisement setting forth the merits of a book on "Intoxicating Liquors" announces that the authors are "men who have had practical experience in and out of the courts concerning this subject."

Our Judges Are Wiser Now.—The late Professor William P. Blake, whose encouraging mineralogical reports induced the United States to buy Alaska, believed firmly in his country's future.

Professor Blake, in a Fourth of July address that Tucson still remembers, pointed out the forward strides that Arizona had made.

"Think of the ignorance and illiteracy of the past, all vanished now," he said. "Once, while out on a mineralogical trip, I wandered into a courthouse in an Arizona village.

"The case afoot concerned a letter. The prosecution wanted this letter admitted in evidence, but the defense wanted it barred out. Finally the judge said reluctantly:

"'Hand the pesky thing up here and I'll decide on it.'

"So the letter was handed up to the judge, and he put on his spectacles and looked at it sideways and crosswise, and a loud laugh went up from the spectators.

"'What are they laughing at?' I asked the man next to me.

"'Why, at the jedge's bluff, o' course,' was the reply. 'The old fool can't read readin'-writin', let alone writin'-writin','"
—New York Tribune.

Exceeded the Speed Limit.—A guest in a Cincinnati hotel was shot and killed. The negro porter, who heard the shooting, was a witness at the trial.

"How many shots did you hear?" asked the lawyer.

"Two shots, sah," he replied.

"'Bout like dis way," explained the negro, clapping his hands with an interval of about a second between them.

"Where were you when the first shot was fired?"

"Shinin' a gemman's shoe in de basement of de hotel."

"Where were you when the second shot was fired?"

'Ah was a-passin' de Big Fo' depot."
—Literary Digest.

Non-Conservation.—A traveler on the country roads of central Vermont is impressed by the large number of signs which prohibit hunting and fishing on the premises. One farmer, however, introduced a pleasing variety by the following notice:

* Hunt, fish, and be d—— if you get anything you will do better than I can.
John Smith. *

—Life.

As He Saw It.—The jury room was hot and stuffy. All through the night, at intervals of half an hour, a ballot had been taken and no definite conclusion reached. The forenoon wore away, and on the forty-second ballot the vote stood as it had stood since the exit from the court room,—eleven—one.

When the foreman announced the result the "one" man addressed the "eleven" in angry tones:

"Consarn you! You are the stubbornest men I ever saw.—The Housekeeper.

A Purist in Court.—Lawyer—You drive a wagon, do you not?

Witness—No, sir, it's a horse I drive.
—Boston Transcript.

Amended.—The Court: "You will swear that the prisoner stole your umbrella?"

The Plaintiff: "Your Honor, I will swear that he stole the umbrella I was carrying."

His Only Hope.—Mr. W. O. Hart, of New Orleans, tells this story: An old negro was brought up before the judge, charged with chicken stealing; and when the usual question was propounded, "Guilty or not guilty," he said: "I don't know, boss; I jest throw myself on the ignorance of the court."

Overspoke Himself.—Captain A. T. Stovall of Okolona, Mississippi, tells this story of an old negro who was "up for killing anoder nigger."

"A negro is not generally considered a strong witness, and yet there is no such thing as throwing him off his guard when he knows what he should swear to.

"This is illustrated by the experience of a certain negro who had killed another down in Mississippi, because he had heard the other had made threats against his life. The facts of the killing were very much against the slayer. He went to his district attorney, who happened to be the son of the former owner of the accused, and made a clean breast of the whole situation, and asked him to "throw the case out of court," as he expressed it. The negro was surprised when he was told by the district attorney, who was his boyhood friend, that the killing was coldblooded murder, and he would be forced to hang him for the crime. He advised him to employ the best lawyer he could find if he wanted to save his neck.

"Sure enough, the negro employed another lawyer. When the case came to trial the negro told a different story and established a perfect case of self-defense. The district attorney was so disgusted by the outcome that he determined to go

into the previous statement made to him by the negro. He related the facts of the killing as previously told, and asked the negro if that was not his original account of the matter, just after the killing occurred. He listened to the question with rapt attention, and, realizing its perfect truthfulness, without the batting of an eye or the exhibition of the slightest concern over the awkwardness of the situation, answered as follows: "Yes, sir, boss, I told you dat, but when I did I overspoke myself."

The Point of View.—Judge W. D. Anderson of Tupelo, Mississippi, relates this occurrence:

"Uncle George Snow, an old *ante bellum* negro, was introduced for the state. The counsel asked Uncle George which side of Souchatouchee creek he lived on, to which he replied:

"Which side of the creek do I live on, boss?"

"Yes."

"Gwine up or down the creek, boss?"

A Story for Men.—Another story credited to the late Justice Brewer has it that while he was judge in a minor court, he was presiding at the trial of a wife's suit for separation and alimony. The defendant acknowledged that he hadn't spoken to his wife in five years, and Judge Brewer took a hand from the bench in examining the witness.

"What explanation have you," he said severely to the defendant, "for not speaking to your wife in five years?"

"Your Honor," replied the husband, "I didn't like to interrupt the lady."—Kansas City Journal.

Counter-Case.—Upon being called in the police court at Asheville, North Carolina, charged with an assault upon a clerk at a soda-water fountain, the defendant arose and said: "Your Honor, I am guilty, but I plead a counter-case." Whereupon the aforesaid clerk arose and replied: "Your Honor, the counter didn't have anything to do with it. I walked around the counter before I struck him."

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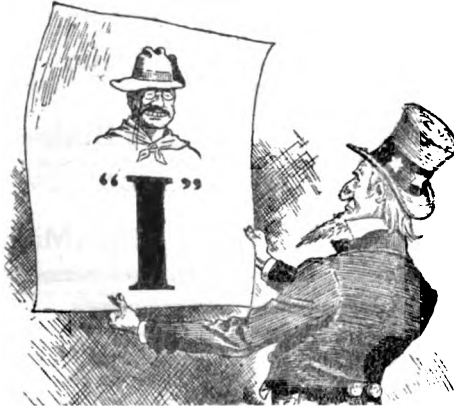
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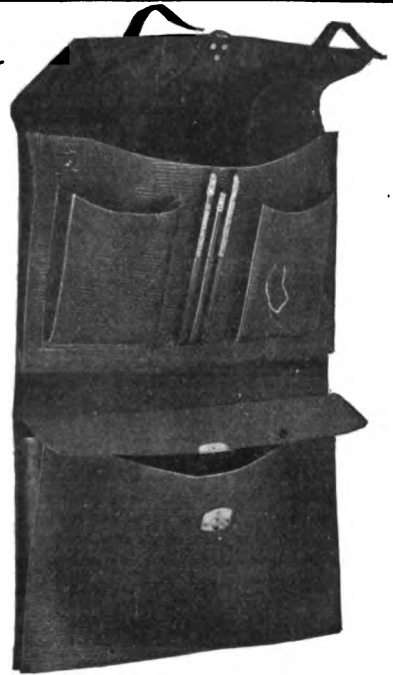


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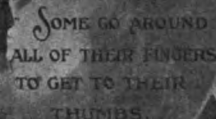
Nov.
1910
Vol. 17 No. 6

Blackstone
Number
10c.

IN THIS ISSUE
*The Place of Blackstone's
Commentaries in Legal Literature*

By HON. HAMPTON L. CARSON

(With Apologies to John Bunyan)



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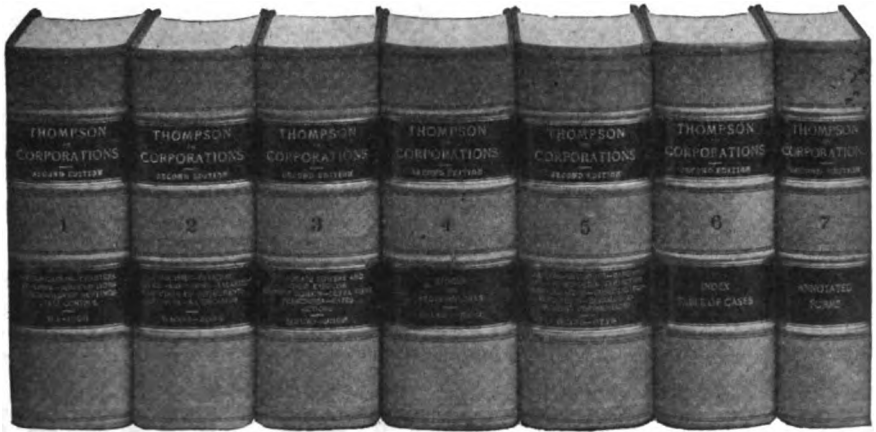
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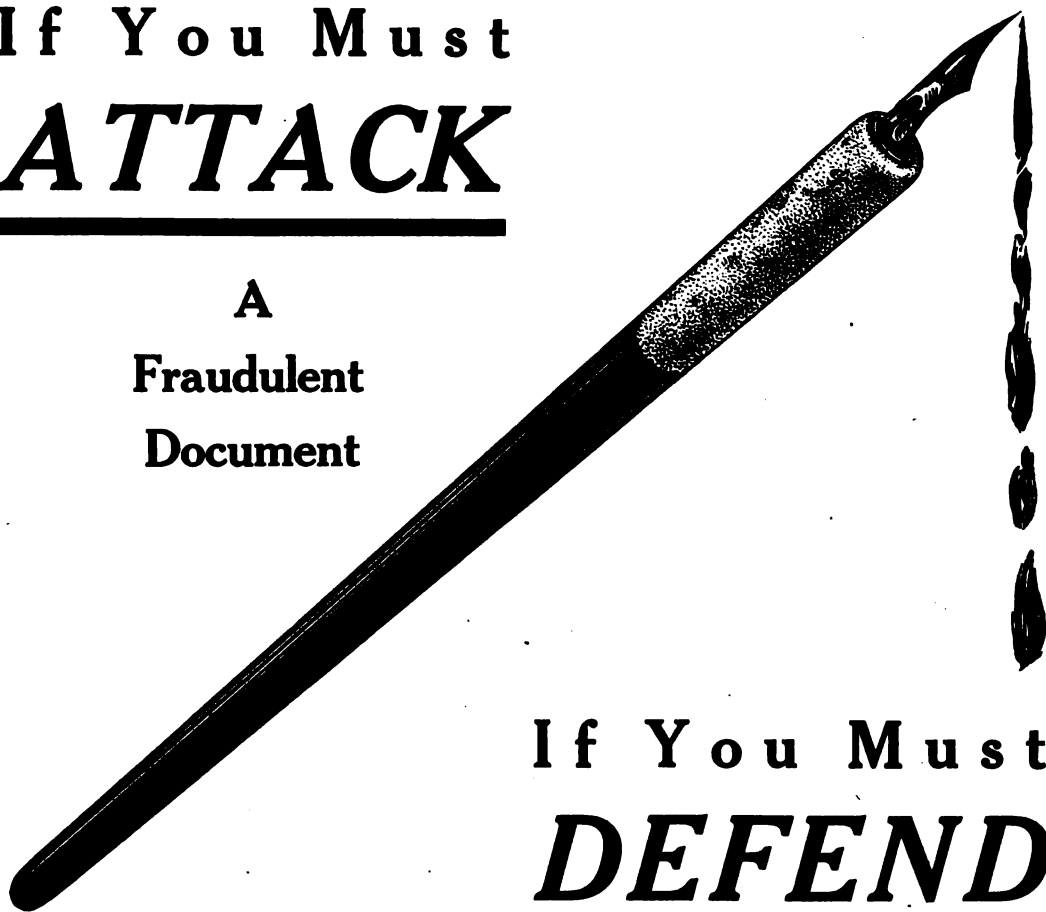
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WILLIAM Blackstone, born July 10th, 1723, was the posthumous son of a London tradesman. "If Blackstone's father—the silk mercer of Cheapside—had not died before his son entered the world," says an English writer, "the author of the Commentaries on the Laws of England might have lived and died a prosperous tradesman—a citizen of 'credit and renown' like worthy John Gilpin, and nothing more. But Fate ordered otherwise. The silk mercer died, and young William Blackstone fell to the care of his maternal uncle, Mr. Thomas Bigg, an eminent surgeon of London, by whom, at the age of seven, he was put to school at what his biographer calls 'an excellent seminary,'—to wit, the Charterhouse, the school of Addison and Steele, of Thackeray and Leech."

Seminary and College Days.

"So assiduous was he in his studies that at fifteen he had got to the top of the school and was fit for Oxford, whither he went shortly afterwards as an exhibitor of Pembroke College,—the same college where, a few years before, Samuel Johnson, a poor scholar, with characteristic independence of spirit, had flung away the new shoes which someone in pity of his shabbiness had put at his door. Here at Oxford Blackstone assimilated much Latin and Greek, logic and mathematics, and achieved a fellowship at All Souls. He even composed a treatise on architecture, but the 'mistress of his willing soul' was poetry."

Poetic Talent.

"It was a poetical age; the stars of Swift and Pope were setting, but the stars of Thomson and Akenside, of Shensstone and Gray, were rising, and Blackstone had undeniably a very pretty gift that way. Already at school he had won a gold medal for a poem on Milton, and the fugitive pieces which he afterwards collected show that he might have won an honorable place among the poets of the Augustan age of England. The motto he prefixed to these effusions was the line from Horace: *Nec lusisse pudet, sed non incidere ludum*, which may be roughly rendered: 'I shame not to have had my fling; shame's his who cannot stop.' Conscious that poetry was not his life work; conscious, probably, of his own limitations in the art,—he bade farewell to his muse in some excellent lines, and girded himself up for his severer studies."

Blackstone as a Law Student.

"It was no primrose path which he had chosen for himself in this study of the law, but a steep and thorny track. There was nothing in the legal London of the eighteenth century of the well-ordered academic life to which he was used at Oxford; no system of professional training. The age of moots and readings was past and that of 'pupilizing' had not begun. This is how he sketches the novitiate of the law student of his day. 'We may appeal to the experience of every sensible lawyer whether anything can be more hazardous and discouraging than the usual entrance on the study of the

law. A raw and inexperienced youth in the most dangerous season of his life is transplanted on a sudden into the midst of allurements to pleasure, without any restraint or check, but what his own prudence can suggest; with no public direction in what course to pursue his inquiries—no private assistance to remove the distresses and difficulties which will always embarrass a beginner. In this situation he is expected to sequester himself from the world, and by a tedious, lonely process to extract the theory of law from a mass of undigested learning, or else by an assiduous attendance on the courts to pick up theory and practice together sufficient to qualify him for the ordinary run of business.' We have changed all that now, thanks very much to Blackstone himself. The law student of to-day has his director of studies, his student's library, his lectures, his prizes, his moots and debating societies. Had Blackstone himself enjoyed the last advantage—practised declamation in a debating society—he might have won his way to professional distinction earlier; for, as his biographer admits, he was 'not happy in a graceful delivery and a flow of elocution, and so acquired little notice and little practice.' Well was it, however, for the world that he did not, for as a busy junior he could never have laid the foundations of that wide legal learning which shines forth in the Commentaries. We, looking back, can see this, but Blackstone only saw that he had been waiting vainly on Fortune, the fickle goddess, for nearly seven years after his call (1746), and he made up his mind to woo her smiles no longer, but to retire to his fellowship at All Souls."

Blackstone as an Oxford Don.

"A most useful member of the college he proved. As bursar he put the college muniments in order, he reformed the system of accounts, completed the Codrington Library, and by an essay on Collateral Consanguinity did much to relieve the college from troublesome claims by remote kindred of the founder. As a delegate of the University press he made himself master of the mechanical part of printing, remedied abuses, and rescued the press from the 'indolent obscurity' in-

to which it had sunk. As visitor of Queen's College he was instrumental in building the fine façade of that college which now fronts the High street. Wherever he went Blackstone brought with him—all his life—an active, orderly, reforming mind, and an enormous capacity for taking pains."

Law Lectures.

At the suggestion of Murray, afterwards Lord Mansfield, Blackstone delivered a series of lectures on English law, on his own account, at Oxford, "and the experiment proved eminently successful. The lectures are attended, we are told, by a 'very crowded class of young men of the first families, characters, and hopes,' and Blackstone's fame as a lawyer grew in proportion. The King paid him the compliment of asking him to read his lectures to the Prince of Wales, afterwards George III. An edition of the Great Charter and of the Charter of the Forest, which he published at this time, added much to his reputation; and so when, a year or two after, a professor was to be appointed under Mr. Viner's bequest to the University, Blackstone was unanimously chosen."

Jeremy Bentham, however, who attended the lectures, declares that Blackstone was a "formal, precise, and affected lecturer—just what you would expect from the character of his writings—cold, reserved, and wary, exhibiting a frigid pride." But this estimate need not surprise us when we recall the mental attitude of Bentham, who states that to no small part of the lectures he listened "with rebel ears."

Vinerian Professorship.

"For four years Blackstone was Vinerian Professor, a period signalized by the composition of those lectures which became known to fame as the Commentaries, and which, so it is said, brought the fortunate author a return of no less than £14,000—probably the largest remuneration the author of a single legal treatise has even been able to secure. Blackstone's practice at the bar increasing, he resigned his Vinerian Professorship in 1762, being succeeded by Robert Chambers, afterwards Chief Justice of Bengal,

but best remembered as an intimate friend of Dr. Johnson. In 1777 Chambers was succeeded by Richard Woodeson, who wrote several legal works of no great note, and in 1793 he in turn gave place to James Blackstone, a son of the first professor. A new distinction was conferred upon the post when, in 1882, Mr. A. V. Dicey was elected to fill it; for his lectures have given us his classic work on the English Constitution, and his no less interesting and valuable *Law and Opinion in England*."

Legal Practice.

"In 1759 on the strength of his rising fame, Blackstone had taken chambers again in the Temple, and his own reports (*King's Bench*), covering the whole period from his call to his death (1746-1779), show that his services were increasingly in demand. His name constantly appears in the arguments before Lord Mansfield. In 1760 he was invited by Chief Justice Willes to take the coif. In 1763 he became Solicitor General to the Queen and a Bencher of his Inn,—the Middle Temple. But it was not until 1765 that the first volume of his famous *Commentaries*, based on his lectures, made its appearance."

Composition of the *Commentaries*.

"The *Commentaries* were written on the first floor (south) of 2 Brick court, Temple, but not without interruption from a lively neighbor. Oliver Goldsmith, recently enriched to the amount of £500 by the profits of the *Good-Natured Man*, had invested the money in the purchase of chambers on the second floor of the Brick court, exactly over Blackstone's head, and these chambers were the scene of much hilarious festivity. Sometimes it was 'a cheerful little hop,' at other times a supper party with blindman's buff, forfeits and games of cards, diversified with Irish songs, or a minuet danced by Goldsmith with an Irish lady, in which the poet testified the exuberance of his spirits by wearing his wig back to front, or tossing it gaily up to the ceiling. 'Very probably,' said Lord Chief Justice Whiteside, 'while Blackstone was deep in the mysteries of the Feudal system, his investigations were in-

terrupted by the merry companions of Goldsmith singing lustily 'The Three Jolly Pigeons.' These overhead revels naturally did not assist the progress of the great work, and were the subject of frequent complaint on the part of the Doctor of Laws against the Doctor of Physic." But we may well overlook the eccentricities and faults of Ireland's sweetest poet when we remember the splendor of his genius. We may say with Dr. Johnson, who, when he first learned that Goldsmith was dead, sadly remarked: "Poor Goldy was wild—very wild—but he is so no more."

"Another interesting circumstance is related by Dr. Scott. 'Blackstone,' he says, 'a sober man, composed his *Commentaries* with a bottle of port before him, and found his mind invigorated and supported in the fatigue of his great work by a temperate use of it.'"

Member of Parliament.

"With his return to practice in London, Blackstone entered Parliament as a member for Westbury. Wilkes, the notorious agitator, had just then set the country in a blaze with an obscene and impious libel, and in consequence had been expelled from the House of Commons, and Luttrell elected in his place. This election of Luttrell, known as the Middlesex election, was challenged by the Whigs as unconstitutional on the ground that Wilkes' expulsion did not create in him an incapacity of being re-elected. The Tories brought on a motion to declare Luttrell duly elected, and Blackstone, being put forward to support it, gave it as his opinion that Wilkes was by the common law disqualified from sitting in the House. Grenville, on behalf of the Whigs, retorted by reading a passage from the *Commentaries* (p. 162) stating the causes of disqualification, none of which applied to Wilkes. Instead of defending himself, Blackstone, according to Philo-Junius, 'sunk under the charge in an agony of confusion and despair.' 'It is well known,' says the same writer, describing the scene, 'that there was a pause of some minutes in the House, from a general expectation that the doctor would say something in his own defense, but it seems that his faculties were too much over-

powered to think of those subtleties and refinements which have since occurred to him.' Smart party journalism of this kind must not be taken too seriously. Blackstone was silent, partly because he was not naturally a ready debater, and partly because your deep thinker takes longer to adjust his ideas. But Sir Fletcher Norton—an expert debater—came to his rescue and turned the laugh against Grenville: 'I wish,' he said, 'the honorable gentleman instead of shaking his head, would shake a good argument out of it.'"

"The passage in question from the Commentaries furnished, no doubt, a capital *argumentum ad hominem* for debating purposes, but it was not inconsistent with Blackstone's Parliamentary view. It enumerated the disqualifications for serving in Parliament, not mentioning the case of expulsion, which, no doubt, Blackstone had not thought of before, and concluded with these words, 'But, subject to these restrictions and disqualifications, every subject of the realm is eligible of common right.' In subsequent editions of his work Blackstone added Exclusion from the House to the list, and hence arose the practice at Whig banquets of giving as a toast 'The First Edition of Blackstone's Commentaries.' Whatever the merits of the controversy, its result was to disenchant Blackstone with Parliamentary life. It taught him the lesson—to use his own words—that 'amid the rage of contending parties a man of moderation must expect to meet with no quarter from any side.'"

Letters of Junius.

"Junius's Anti-Blackstonian letters," wrote Mr. N. W. Sibley, "are some five in number, some of which were written under the *nom de guerre* of Philo-Junius. Speaking of the learned Commentator's action in the Wilkes' controversy, the great satirist wrote: 'Doctor Blackstone is solicitor to the Queen. The doctor recollected that he had a place to preserve, though he forgot he had a reputation to lose. We have now the good fortune to understand the law, and reason the doctor's book may safely be consulted, but whoever wishes to cheat a neighbor of his estate, or to rob a country of its

rights, need make no scruple of consulting the doctor himself.' In the letter which he openly addressed to Dr. Blackstone, Solicitor General to Her Majesty, Junius declared that the omission of a previous expulsion from the category of incapacities to sit in the House of Commons amounted to so grave a defect in the Commentaries as to render them—what Blackstone himself called unrepealed penal laws—'a snare to the unwary.' Junius concluded: 'If I were personally your enemy I should dwell with a malignant pleasure upon these great and useful qualifications, which you certainly possess, and by which you once acquired, though they could not preserve to you, the respect and esteem of your country. I should enumerate the honors you have lost, and the virtues you have disgraced; but, having no private resentments to gratify, I think it sufficient to have given my opinion of your public conduct, leaving the punishment it deserves to your closet and yourself.' To employ Edmund Burke's language about Junius, he made the doctor his quarry, and made him bleed beneath the wounds of his talons. On the other hand, Blackstone's oration in the House of Commons on Wilkes' reelection, while it gave birth to a literature almost as extensive as that of the German critics on Cicero's 'Oratio pro Murena,' found able defenders, and the doctor's reply to Junius was not wanting in incisiveness. It is impossible not to recognize the force of his defense that the House had the power to pass a law on a particular person, that the privilege of the Roman law furnished a parallel, and that acts of attainder afforded apt instances of laws passed against particular persons. But perhaps Junius won a triumph over the doctor, by his pointing out that the latter attributed to a resolution of one House the force of law, and that in 1698 an expelled member was re-elected and sat again in the House. Besides his support of the government in Wilkes' case, Blackstone incurred the censure of Junius for having been an adviser of Sir James Lowther against the Duke of Portland in the dispute concerning the Cumberland Crown lands in Inglewood Forest upon the obsolete law of *nullum tem-*

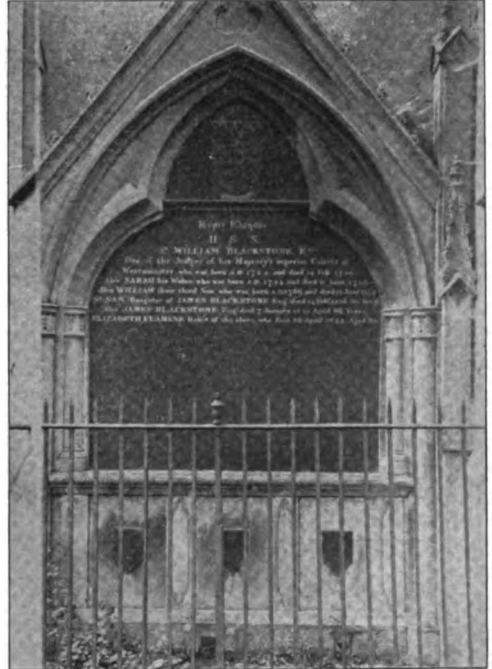
pus. But perhaps the letter written by Junius under the *nom de guerre* of 'Simplex,' protesting against the pardon granted to one Quirk, a rioter during the Wilkes' contest, contains the most elaborate satire written by Junius on Blackstone. The innuendo in the letter seems to lie in imputing to Blackstone that he never gave advice consistent with his statement of the law in the Commentaries. But, so far from denouncing his Commentaries on this occasion as 'a snare for the unwary,' Junius said: 'The respect due to his (Blackstone's) writings will probably increase with the contempt due to his character, and his works will be quoted when he himself is forgotten or despised.'"

Opposition to Law Reform.

In 1731 Parliament enacted that thereafter all proceedings in the courts should be in the English language, written in common legible hand, and in words at length. "Such eminent personages, however, as Mr. Justice Blackstone and Lord Chief Justice Ellenborough," says the Daily Telegraph, "frankly confessed that they regretted the halcyon days when Norman-French and Latin were the legal tongues. Norman-French, though fairly copious as to vocabulary, was not always equal to demands made upon it by legal gentlemen. Occasionally they found themselves compelled to eke out their Norman-French with English. An address to a grand jury is preserved, in which that body was being at once cautioned against the dangers of Popery, and reminded of the enormity of the offense of those who received stolen goods. 'Car jeo dye,' remarks the draftsman, 'pur leur amendment, ils sont semblable als vipers labouring to eat out the bowells del terre, which brings them forth. De Jesuits leur positions sont damnable. La Pape a deposyer Royes ceo est le badge et token del Antichrist. Doyes etre careful to discover aux. Receivers of stolen goods are semblable a les horse-leeches which still cry, "Bring, bring."' This was the jargon which Cromwell abolished and King Charles II. restored to the courts, and which Mr. Justice Blackstone lamented."

Promotion to the Bench.

"In 1770 Blackstone was raised to the bench as a judge of the common pleas, and continued to sit until his death, nine years later. But the great commentator on the laws of England was not destined to develop into the great judge,—the rival of Mansfield or Buller. He was lacking in initiative,—too cautious in his views; too scrupulous in his adherence to formal-



BLACKSTONE'S TOMB.

In St. Peter's Church, Wallingford, England.

[From photograph recently taken by Mr. Albert S. Osborn, and reprinted by his kind permission. Inquiries made of a number of villagers disclosed the interesting fact that they had never heard of the Great Commentator.—Ed.]

ities. The reputation he has left is that of a sound and painstaking judge, not a judge of the brilliant or architectonic order."

Disposition.

"He was not too busy to find time for innocent amusements. He was, says his brother-in-law, 'notwithstanding his contracted brow (owing in a great measure to his being very near sighted) and an appearance of sternness in his countenance, often mistaken for ill-nature, a cheerful,

agreeable, and facetious companion.' But all men have their failings, and his was a constitutional irritability of temper, increased in later years by a strong nervous affection. This may be illustrated by an anecdote related by the author of *The Biographical History of Sir William Blackstone*: 'I was perfectly well acquainted with a certain bookseller, who told me that, upon hearing Mr. Blackstone had commenced Doctor of Civil Law, the next time he did him the honor of a visit, he (the bookseller) in the course of conversation, and out of pure respect, called the new made civilian, "Doctor." This familiar manner of accosting him (as he was pleased to term it) put him in such a passion, and had such an instantaneous and violent effect, and operated upon him to so alarming a degree, that the poor bookseller thought he should have been obliged to send for a doctor. People in these days put such irritability down to temperament, and are rather proud of it. Not so Blackstone.

He was—so Lord Stowell tells us—the only man he had ever known who acknowledged and bewailed his bad temper.'"

Wallingford.

"His home was at Priory Place, Wallingford,—conveniently situate between London and Oxford,—and here, as elsewhere, he was active in local improvements, in road making and bridge building; the bridge at Shillingford, well known to lovers of the Thames, is one which we owe to him. To his architectural talents, liberal disposition, and judicious zeal, Wallingford likewise owes the rebuilding of the handsome fabric, St. Peter's Church. He died on February 14th, 1780, in the fifty-seventh year of his age, and was buried in a vault built for his family in this church."

The foregoing sketch is mainly compiled from various articles heretofore published in *The London Law Times*.



Spire of St. Peter's Church, Wallingford. A beautiful scene photographed by Mr. W. J. Kinsley of New York and printed by his special permission. In this church stands Blackstone's tomb shown on the preceding page.

The Stage Lawyer

BY ALEXANDER OTIS

of

the Rochester (N. Y.) Bar

Author of "Hearts are Trumps" and
"The Man and the Dragon."

WHEN a young woman arises to address the judges of one of our appellate courts, the elderly jurists are apt to listen to her with a tolerant smile of indulgence. She is an innovation; and try as they will, they can't become accustomed to the invasion of the gentler sex into the purlieu of jurisprudence. Yet, curiously enough, the first "stage lawyer" of the English drama was a woman, and declaimed upon the "Quality of Mercy" some four centuries in advance of her times.

A New York supreme court justice has recently pointed out how technical was Portia's construction of Shylock's contract with the merchant Antonio, but the young lady was not at all troubled by the frightful precedent she was establishing.

It is difficult to consider the trial scene in the Merchant of Venice seriously from a legal point of view. Imagine it! Such a contract actually brought into court with a demand for specific performance! And yet the fair jurist calmly decides that Shylock is legally entitled to his pound of flesh if he can manage to take it without spilling one drop of Christian blood!

The dramatic effect of all this is wonderful, but from the legal point of view the absurdity has only just begun. Having decided this peculiar equity suit, Portia proceeds to formulate a criminal accusation against Shylock, and, without the formality of arrest or indictment, places him on trial on the charge of conspiracy against the life of Antonio, finds him guilty, on the evidence adduced in the civil action, and then and there sentences him to the forfeiture of his entire estate, both real and personal, and re-



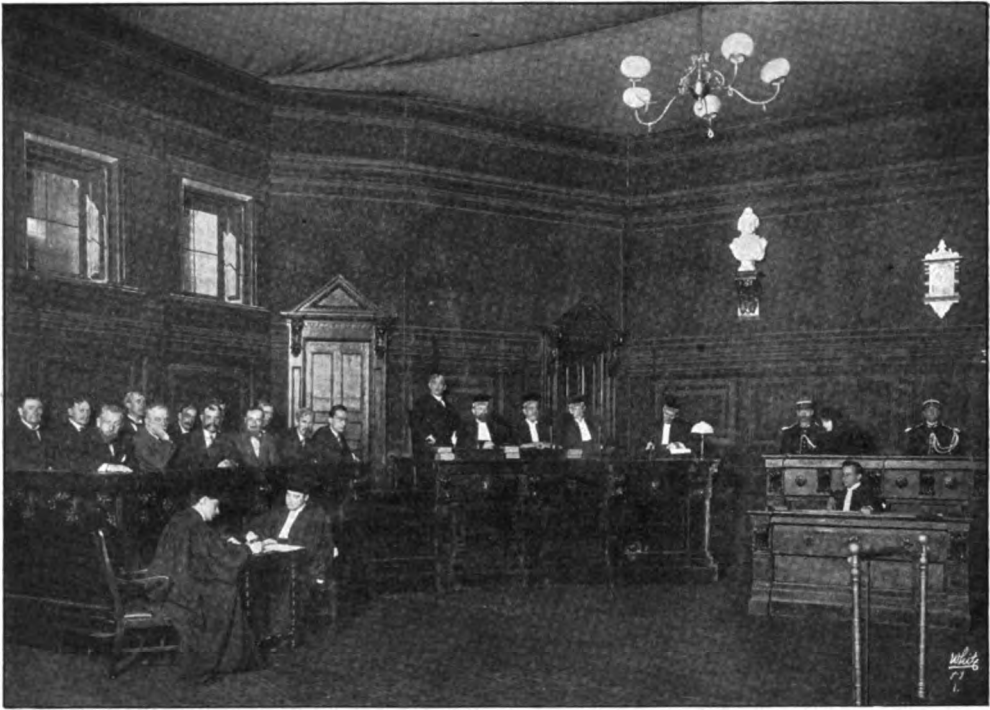
William Elliott as Raymond Floriot, the son and lawyer, in the Henry W. Savage production of "Madam X."

duces him to beggary. A most effective denouement, but it isn't justice and it isn't law. The excellent young woman whom we all admire for her well phrased ideas on "mercy" wouldn't be a safe person to preside over a night police court. She isn't "fossilized," however, though she is almost four hundred years old!

If the greatest dramatic artist of any clime or time thus felt at liberty to maul and mux law and legal procedure in order to produce the desired dramatic effect, what can well be expected of the lesser lights of the English drama?

As a matter of fact, other dramatists, while equally careless about the law, have dealt less kindly with the lawyer. When all is said, Portia was a charming young lady when she kept within her own "sphere" and didn't go about "suffragetteing." The legal practitioner has never been a popular stage character, taken hie and large, and he sank to the lowest depths behind the footlights when "Uncle Tom's Cabin" was on the decline and the advertisements read: "Two Topseys, two Funny Markses, and a Double Pack of Bloodhounds."

But long before the antislavery agitation the attorney seems to have been in bad odor with the dramatist. Most of the old-school playwrights were of the "Grub street" order, and one peculiarity that marked the Grub street folk was their famished condition from lack of "grub." So it often happened that poets



The Court Room Scene in "Madam X."

and dramatists were hard up, and were, through legal process, cast into sponging houses. It is small wonder, therefore, that they thought ill of the law, and often vented their spleen on the attorney through the creatures of their imagination. It is only human to "get even;" but the result has been that the profession has suffered through the poet's revenge in the characterization of the "stage lawyer."

On the other side of the ledger, attorneys to this day are apt to look askance upon poets, dramatists, and long haired geniuses generally, on the theory that such æsthetic personages cannot be expected to settle a judgment until after an order to punish for contempt in supplementary proceedings. Surely the man of law has a right to his innings; but the result has been that law and literature have been at loggerheads for a generations.

Only recently the most brilliant wit among modern dramatic writers has followed the traditions of his craft and held up the legal profession to ridicule. One

cannot help wondering whether Mr. Bernard Shaw had not just been served with legal process of some sort at the instance of an unfeeling and unpoetic solicitor when he penned that amusing farce, "You Never Can Tell," which has been acted in this country recently. For the sake of the legal profession let us devoutly hope that the dramatist never gets into trouble with his tailor, or other grasping tradesman.

As a fair illustration of the way the "stage lawyer" is maligned and made ridiculous, I will quote briefly from a scene in "You Never Can Tell."

A young lady is dining with an attorney at a summer hotel, and the following conversation with their waiter ensues:

Young Lady. Is your son a waiter, too, William?

Waiter. (*Serving fowl.*) Oh no, Miss, he's too impetuous; he's at the bar.

Lawyer. (*Patronizingly.*) A potman, eh?

Waiter. No sir, the other bar; your profession, sir,—a Q. C., sir.

Lawyer. (*Embarrassed.*) I am sure I beg your pardon.

Waiter. Not at all, sir, a very natural mistake I am sure, sir. I've often wished he was a potman, sir. Had to support him until he was thirty-seven; but doing well now, sir.

Lawyer. Modern democracy!

Waiter. No sir, not democracy; only education, sir; scholarships, sir; Cambridge local, sir; Sidney Sussex College, sir; very good thing for him, sir; he never had any turn for real work, sir!

If "potman" is translated "bartender," an American reader may be able to catch a glimpse of the satire, even though the dialogue be written in British *patois*. Even at that the average American attorney will find it difficult to appreciate what an insult to the profession was intended by Mr. Shaw. Our only possible retaliation is once more to hope that he will never be annoyed by process servers.

Whether or not I have suggested the correct reason, the fact remains indisputable that the lawyer has seldom been a popular character on the stage. Of course there are exceptions that prove the rule, and now and then the dramatist finds use for a man of law to serve the purpose of *Deus ex machina*, and pull the shrinking heroine out of the clutches of the villain; but far more frequently he is the rascal in whose fertile, but morally distorted, brain, is concocted the scheme whereby she is robbed and cheated and placed in the most deplorable plight, all for the dramatic purpose of giving the hero scope for the display of wonderful powers of valor and adroit skill in the denouement.

And after all, why should not this be so, as long as the audience is interested and amused? Why should a dramatist bother his head about the correct portrayal of legal principles and procedure? This is not the end or aim of his art. Plays are dashed off with a very broad brush. They are to other literature what scene painting is to art. Nothing can be photographic, nothing detailed; it is all meant to be viewed under glaring lights, with the strains of the orchestra and the mazes of the dance. A theater is neither a court nor a law school, and if the dram-

atist were true in his picture of law and lawyers he would probably please no one.

One other fact must be borne in mind in criticizing stage conceptions of what the law is and what manner of men are they who devote their lives to its study. Most of our plays are stolen or adapted from the French, whose legal system is so utterly different from our own.

Even when the dramatist or novel writer who undertakes to deal with law and lawyers chances to have had some legal education, he is apt to find that this knowledge rather hampers his imagination, dragging like a ball and chain on his flowing pen, encumbering his fancy with forms and actualities. He has passed his legal career trying to twist facts to fit the law. In every litigation the evidence has to be stretched or lopped off to dovetail with some Procrustean statute or decision.

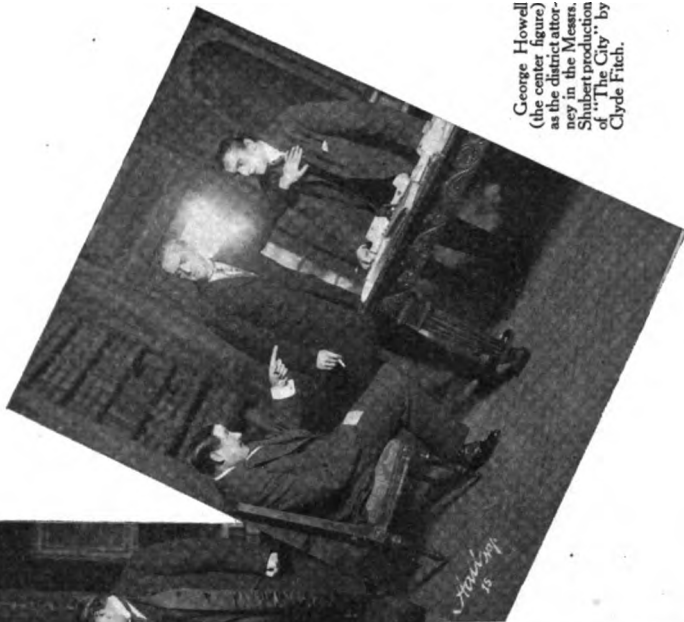
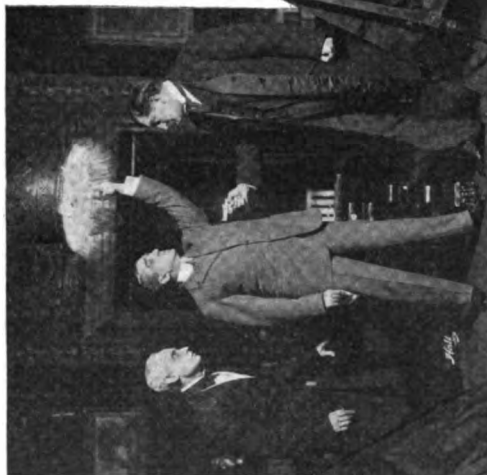
Imagine, then, the relief when an attorney takes up his pen to construct a novel or the plot of a drama! He suddenly finds himself master of the situation in a new and delightful way. He discovers that he can control the destinies of his dream-children by manufacturing the law to suit the needs of the situation.

In my personal experience, I found, in the construction of my first novel, after I had managed to tie all my characters up into a double-bow knot, and couldn't quite see the way clear to extricate them, the whole dilemma was easily solved by "faking" a statute which would put everyone to rights. The act has never been judicially construed, but I fear it would make people dance to some very peculiar tunes. However, it served its purpose and its "sec. 4" read: "This act shall take effect immediately." That turned the trick for me. It made no difference how absurd was the law, "sec. 4" was all that was required to lend the essential *vrai semblance* to this remarkable piece of off-hand legislation.

Of course, as already admitted, there have been a few well conceived stage lawyers who have walked and talked behind the footlights in a way to honor the profession. Now and then some dramatist finds wind to breathe into a legal practitioner the breath of life; but it is not the laborious purpose of this article to

As Lawyers Appear in The Dramas of The Day.

Frank Hardwick (figure at right) the district attorney in the Messrs. Shubert production of "The Wishing Hour."



George Howell (the center figure) as the district attorney in the Messrs. Shubert production of "The City" by Clyde Fitch.



Edmund Bruce as the lawyer in the Henry B. Harris production of "The Third Degree," by Charles Klein.



Robert Edson as the lawyer in the Henry B. Harris production of "A Man a Man."

review the history of the stage, and catalogue the men of law who have chanced to be included in the *dramatis personæ*.

Many of these legal characters have been "robustious, peri-wig-pated fellows" after the fashion of Sergt. Buzzfuz, in the farcical Pickwick trial. Others have worn high silk hats and black mustachios, rolling cigarettes *à la mode*, and otherwise suggesting their unspeakable moral depravity. Still others are of the type of the dear old crochety gentleman who has been the family lawyer for a generation, and who always manages to produce lost wills, or other important documents at the psychological moment.

The present year finds an exceedingly popular play still running, in which a "stage lawyer" is the hero; and this is really a refreshing change. It proves, at least, that the public does not necessarily demand that the attorney shall always serve as the villian of the plot. "Madame X," moreover, is a very well constructed melodrama, in which the denouement is a trial scene that does not shock one's legal sense of the eternal fitness of things, partly, perhaps, because the setting is French.

At all events, Alexandre Bisson has produced a play which gives scope in a peculiar sense for that much talked of, but seldom exemplified, "legal knight-errantry." Ordinarily the lawyer works for hire, and does his best for his client in return for his fee. It is perfectly proper, highly honorable, often lucrative, but it isn't poetic.

Nor is the plot of "Madame X" at all impossible, or even highly improbable. Louis Floriot turns his wife, Jacqueline, from his doors because she has been unfaithful to him, and brings up their son in the belief that his mother is dead. The abandoned wife sinks from bad to worse, and, after twenty years of degradation, returns to France with her lover, the last of a long list of temporary affinities.

This lover learns her past, and sees a fine chance to blackmail her son and husband. The wretched woman learns his purpose; she is at the time mad with the drug that has helped in her ruin, and she shoots the lover.

Of course she is arrested, and counsel

is assigned for her defense; but, fearing to expose her past history and bring disgrace on her son, she refuses to say a word or even see her counsel. This counsel is in fact her son, Raymond Floriot, who is about to make his *début* at the bar. This is his first case.

Here is surely a situation which is as ingenious as it is unique, and, withal, peculiarly and delightfully French.

Raymond is complaining to his father how little chance there is for him to make anything out of this sordid case.

"Put some imagination into it," urges the elder Floriot; "she may not be to blame; some husband may have been hardhearted and unforgiving, some lover faithless!"

The elder Floriot has never forgiven himself for his cruelty to his wife. The young man is engaged to marry a lovely girl. "Understand her," advises his father, "don't become so absorbed in your profession that you lose your hold on your wife's heart."

In the English adaptation of "Madame X," Mr. Raphael, the translator, has been careful to preserve the French flavor of the court scene. The three judges and the public prosecutor wear bright red uniforms, and the young attorney, who is about to defend his own mother, a black robe and cassock. There is something ridiculous about the wigs of the English barristers and judges. They seldom fit well and are made of horse hair. In American tribunals attorneys have been known to address the court with their overcoats on. When it comes to law on dress parade the French have the best of us.

As "Madame X" persists in her silence, there is little evidence to be given, and the public prosecutor makes his address first, which helps with the dramatic effect. Then the court calls upon Raymond Floriot.

At the mention of her son's name the poor creature in the prisoner's box utters a cry that goes to the very soul of her young advocate, and she leans over and clasps his hands with a strange fervor that inspires him marvelously.

He takes his father's advice and gives play to his imagination.

"Who knows," he cries, "but that this

woman was once loved and respected, that she was not cast out of her home by a hardhearted and unforgiving husband, and driven to the depths of despair and degradation in which we find her!"

Then young Raymond Floriot, with a burst of eloquence that moves his audience to tears, proceeds, by the power of divination, supplied him by unconscious filial love, to uplift his mother and excoriate his father, who has meantime recognized his lost and fallen wife.

After the address of both counsel and the brief summary of the presiding judge, one of the spectators informs the court that two accomplices of the murdered man in the blackmailing scheme are in the court room, and know something about the case.

Without motion to reopen, without objection on the part of the prosecution, quite as a part of the regular course of events, more evidence is taken, which puts the defense in better light, though not at all absolving the accused from crime as understood by the law of every country under the sun.

However, the jury makes a new and startling application of the "unwritten law," which is quite as popular in France as it is in this country, and "Madame X" is acquitted, amid loud applause both from the stage audience and the audience beyond the footlights.

However, Raymond Floriot has played the part of a true hero of melodrama, and has, by his eloquence, saved his mother from the gallows, by his purely imaginary description of actual facts of which he was at the time unaware. Only thus was it possible that a "stage lawyer" should fulfil the dramatic requirements, and stand forth as the hero of the scene and the occasion.

Under these circumstances the members of the bar should pass a vote of thanks to M. Bisson, and not cavil because he has his case summed up first and the evidence put in afterwards. What difference does it make anyhow? Poetic license in court trials must be permissible if court scenes are to be staged, and, besides, who knows but that is the way they do things in France? The notion of summing up a case before bothering with the evidence would adapt itself excellently

to the mental processes and methods of many famous American advocates, and might serve the cause of justice now and then, even if it were a bit confusing until we became accustomed to the innovation.

The truth of the matter is that the sober business of the legal profession does not lend itself readily or naturally to dramatic situation. To be sure a great artist can paint a great picture of a rooster on a dunghill, if he wants to. For it is the art that is to be exemplified, and not the picture. And a great dramatist, to illustrate the proposition, has just set all the world agape with his "Chantecler,"—minus the dunghill; but Chantecler is "nothing but a darned old rooster with a classy name;" and it must be confessed that the barn-yard fowl has proved much better dramatic material than any "stage lawyer."

The truth is that we are such prosy folk, with our "aforesaid" and "to-wits" and "whereases," that playwrights as a rule find it well to accept the advice of the Northumbrian magistrate to Lady Di Vernon, and "keep their fingers out of the law's musty pie."

At first blush it is difficult to understand why this should be so. Every law suit would seem to lend itself to the requirements of dramatic construction, passing by well-defined gradations from the incidents arising *ante litem motam* to the denouement of final judgment. As De Maupassant—and probably many others—has said, "life resolves itself naturally into drama," and the shelves of every law library are replete with heart throbs; containing the plots and the characters for more dramas and better dramas than have been written by the human pen since the days of Aristophanes. For law is life epitomized, and courts of law have been cynically described as "great maternity hospitals for the miscarriage of justice."

While all this is true, while it is indisputable that every writer and dramatist might glean vast stores of humor and pathos from out the hidden world that lies between rotting sheepskin covers, the fact remains that the grooves of legal procedure do not fit the wheels of a chariot drawn by Pegasus.

Yet what a theme for the pen of the

serio-comic muse is the fate of that poor chap arrested and convicted in South Carolina colonial days for disturbing a religious meeting, on the ground that when he tried to sing it moved the congregation to irresistible laughter,—a mere nugget from the dramatic material on our office shelves, a mine workable only on the placer theory; though, by the way, Mr. Anthony Hope has recently woven a charming love story around a disputed right of way.

Criminal trials and the quasi criminal divorce and breach of promise litigations appeal most vividly to the makers of plays and to the popular imagination generally. How many young men would select the law for a profession if they did not dream of one day addressing a jury and melting it to tears by their eloquence, like Raymond Floriot in "Madame X?"

It is a melancholy fact that there are more "stage lawyers" off the stage than on it. To strut about before a jury, grimace, gesture, roar, bellow, and carry conviction by force of lung power is the notion too many young men have of the way in which a lawyer is to win his way to fame and fortune.

It is a deplorable fact that in the popular view the attorney is to be measured by the bigness of his jawbone,—with apologies to Sampson, and to Delilah also, and to all the other lady friends of the Jewish giant, who slew the Philistines with that unique but powerful weapon. This notion was well expressed in that remarkable ditty Alice heard in Wonderland:

"In my youth, said his father,
I took to the law,
And argued each case with my wife;
And the muscular strength
That it gave to my jaw
Has lasted the rest of my life!"

In all seriousness, however, as the members of the profession well know, the power of "eloquence" is being confined within narrower limits every year. The old fashioned way of trying cases, by "stage lawyers"—off the stage—hectoring witnesses, bulldozing the court, and endeavoring to hypnotize the jury, is passing rapidly into deserved disrepute, if not disuse.

The silent man, who studies nights, thinks much, and says little, but that little very much to the point, is coming to be the lawyer's ideal lawyer,—even though he is not of the type to shine as a hero of melodrama. The stage lawyer is all right if he will only keep himself behind the footlights. The other kind of a lawyer, the hard-working, careful-thinking, prosaic student, will be well satisfied, on the other hand, to keep off the stage and out of the lime light, content to play his part in life, soberly and justly.

While all this is eternally so, and it is well that it is so, the fact remains that the ideal of every one of us, the fullness of our life's fruition, was depicted for us by the greatest of all dramatists, even he who perpetrated the trial scene in the Merchant of Venice.

Every lawyer would like one day to attain to the "fifth age of man,"—the justice, of "fair round belly, with good capon lined, full of wise saws and modern instances."

Perhaps we may not all become justices. There are not enough judicial positions to accommodate all of us. But surely it is within the reach of every practitioner to achieve the "fair round belly," the good capon lining, the "wise saws," and the "modern instances!"



Sir William Blackstone's Influence on the Rule in Shelley's Case

BY HENRY C. SPURR

A GENTLEMAN whose peace of mind had often been disturbed by his literary friends, who persisted in asking him whether he had read such and such a book, knowing that he would be forced to answer that he had not, at last hit upon a happy way out of this trouble. Getting his hands on a five volume set of Carlyle's *History of Frederick the Great*, he set himself faithfully to the task of reading it through, and triumphed. After that, whenever any of his friends would ask whether he had read this or that book he would graciously acknowledge that he had not, and then counter in this wise: "By the way, speaking of interesting books, have you ever read Carlyle's *History of Frederick the Great*?" This expedient, he found, always worked. A thorough mastery of the famous rule in Shelley's Case might be made

to do valiant service as a similar weapon of defense from the attacks of one's learned legal friends; for the truth of the matter is that a very large number of modern lawyers, when this hoary rule is mentioned, make haste, like the priest and the Levite on the road to Jericho, to pass by on the other side. It is regarded as a mediæval curiosity, enveloped in the ghostly mists of the dark ages,—a relic of feudal barbarism useful at the present day only as an example of the extreme subtlety of reasoning of the lawyers of the sixteenth century, and of the nice refinements of the ancient laws of real property.

Not so very long ago a young lawyer

who had run across the rule in his reading, and who was unable to fathom it, wrote to the *American Law Review*, edited by Seymour D. Thompson and Leonard A. Jones, both eminent law writers, asking for "a plain, common sense, easy to be understood, definition of the rule in Shelley's Case," and received the following answer: "Not having the capacity to understand the rule in Shelley's Case, or to acquire an understanding of it by any degree of diligence within the limits of a lifetime, we find ourselves unable to comply with the modest request of our esteemed correspondent."

This reply of the learned editors of the *American Law Review* is, of course, to be taken in a Pickwickian sense; but it well illustrates the attitude of a large portion of the modern lawyers toward the rule.

More than three centuries have passed since Shelley's Case was de-

cided. Over ten generations of judges and lawyers have struggled with the rule there applied, and although it has been abolished by statute, in many jurisdictions, it is still a rule of property in some others; and even where it no longer holds sway, the question whether testators or grantors have used the word "heirs" or words of similar import, as words of limitation or words of purchase, still presses itself upon the attention of the courts.

One of the greatest names associated with this rule is that of Sir William Blackstone, whose lucid argument in the celebrated case of *Perrin v. Blake*¹ fixed

¹ IV. *Greenleaf's Cruise on Real Property*, 313.

When the ancestor, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance, an estate is limited, either mediately or immediately, to his heirs in fee or in tail, always in such cases "the heirs" are words of limitation of the estate, and not words of purchase.—Coke.

the status of the rule in English law, and opened the way to its early adoption in this country.

The rule, it will be remembered, was applied as early as A. D. 1325, and was passed upon in a number of decisions in the Year Books of Edward III. It was not, however, until A. D. 1590 that it attracted general attention, when it was definitely stated in Lord Coke's argument in *Shelley's Case*. The discussion then became so vehement, according to Chancellor Kent, "as to rouse the scepter of the haughty Elizabeth." The agitation after that seems to have subsided until it was again awakened in 1770 by *Perrin v. Blake*. That case arose in Jamaica, and was brought before the privy council of England at a time when Lord Mansfield was the only lord that attended. Deeming the question of too great importance to be decided by himself alone, a feigned case was prepared and submitted to the King's bench. It was there twice argued, three of the judges, including Lord Mansfield, agreeing that the devise was within the rule in *Shelley's Case*, and being in favor of repudiating it, while one, Justice Yates, was for applying it. The controversy that arose was bitter. Pamphlets were written assailing and defending Lord Mansfield. It is said that the great work on *Remainders*, by "the profound" Fearne, was written in part to refute the heresies of that renowned judge.

Lord Mansfield was also the object of a fierce attack in a letter of Junius, in which he wrote: "Even in matters of private property, we have seen the same bias and inclination to depart from the decisions of your predecessors, which you certainly ought to receive as evidence of the common law. Instead of those certain, positive rules by which the judgment of a court of law should invariably be determined, you have fondly introduced your own unsettled notions of equity and substantial justice. Decisions given upon such principles do not alarm the public so much as they ought, because the consequence and tendency of each particular instance is not observed or regarded. In the meantime the practice gains ground; the court of King's bench becomes a court of equity, and the

judge, instead of consulting strictly the law of the land, refers only to the wisdom of the court, and to the purity of his own conscience. The name of Mr. Justice Yates will naturally revive in your minds some of those emotions of fear and detestation with which you always beheld him."

It is said by Lord Campbell in his *Lives of the Chief Justices* that the bar of the entire Kingdom was divided into factions for several years, known as "Shelleyites" and "anti-Shelleyites." An appeal was taken to the exchequer chamber, where, after the case was several times argued, seven of the justices, including Sir William Blackstone, sustained and applied the rule, and one, Chief Justice DeGray, concurred in the views of Lord Mansfield.*

The great question in this case turned upon the intention of the testator, who had devised an estate for life to his son, with an ultimate remainder to the heirs of the son's body, lawfully begotten or to be begotten.

Lord Mansfield said he always thought that as the law had allowed a free communication of the intention to a testator, it would be strange to say: "Now you have communicated that intention, so that everybody understands what you mean, yet because you have used a certain expression of art, we will cross your intention and give your will a different construction; though what you meant to have done is perfectly legal, and the only reason for contravening you is because you have not expressed yourself like a lawyer." His examination of the question had always convinced him that the legal intention, when clearly explained, was to control the legal sense of a term of art, unwarily used by a testator.

Sir William Blackstone, in his argument, pointed out that the object should be to give effect to the intention of the testator, but declared that the true question of intent would not turn upon the quantity of estate intended to be given the life tenant, but upon the nature of the estate intended to be given.

* *Doyle v. Andis*, 127 Iowa, 36, 102 N. W. 177, 4 A. & E. Ann. Cas. 18, 69 L.R.A. 953.

en to the heirs of his body. That the ancestor was intended to take an estate for life was certain; that his heirs were intended to take after him was equally certain; but how those heirs were intended to take, whether as descendants or as purchasers, was the question. If the testator intended they should take as purchasers, then the son, the ancestor, only remained tenant for life; if he meant they should take by descent, or had formed no intention about the matter, then, by operation and consequence of law, the inheritance first vested in the ancestor. The true question was, therefore, whether the testator had or had not plainly declared his intent that the heirs of the body of the son should take an estate of purchase, entirely detached from, and unconnected with, that of his ancestor. In other words, a fee could not descend unless it had previously vested in the ancestor. Consequently, if the ancestor intended that the heirs of the first devisee should take by descent, he could not give him a life estate, because the fee would have to descend through the first devisee. The difference between Lord Mansfield and Sir William Blackstone, therefore, was this: one considered the intention of the testator as to the quantity of estate given the first devisee to be controlling; the other the intention as to the nature of the estate given the heirs.

In Shelley's Case the question of how the heirs were to take was vital. Shelley, the ancestor, the life tenant, was dead. He, therefore, could have no interest in the controversy. Shelley's first son was dead; but the latter had a son who was born after the death of Shelley, the ancestor. Shelley's second son was alive at his father's death. The limitation after the life estate in that case was such that if it was intended that the heir should take by purchase, the property would go to the second son; if it was intended that the heir should take by descent, then the property would go to the grandchild. Therefore the main question in the case turned on the intention as to the nature of estate granted to the heirs, and this is what Sir William Blackstone asserted to be the controlling inquiry in every case. As in his day the bitterness of the con-

troversy turned upon this point, so it continued to revolve about this question, wherever the rule was assailed. The advocates of the views of Blackstone, however, won out; and it was only by the aid of statutes that the rule could be abolished and a means provided by which the intent that the first devisee or grantee should have a life estate only, and the intent that the heirs should take by descent could both be given effect.

It had always been pointed out that the reason for the adoption of the rule in Shelley's Case was of feudal origin, that is, it was said that the rule preserved to the lords the rights of relief, wardship, marriage, etc., of which they were deprived when an estate passed by purchase. Sir William Blackstone gave as an additional reason for its adoption, the desire of the law to unfetter estates. In other words the policy of the rule was to throw property in the track of commerce a generation sooner than it would be available if effect were given to the intention to vest only a life estate in the first taker. This has ever since been the reply of the advocates of the rule, to the charge that its policy was merely feudal. It is doubtful, however, if this argument will stand as close an inspection as that bearing on the intent of the testator or grantor. In a dissenting opinion in a recent Iowa case,⁸ Weaver, J., very clearly pointed out the weakness of this position. He said: "It is not the policy of our laws to restrict, invalidate, or discourage the creation of life estates. . . . Neither has it ever been the policy of the common law to discourage or destroy life estates for the purpose of 'removing clogs' upon the alienability of lands. During all the years since the rule in Shelley's Case came into being, the right to create estates in almost every conceivable method (save only the one form at which the rule is aimed) has been recognized, upheld, and enforced by the courts with unvarying regularity. Thus it happens that, while forbidding the donor to give a life estate to A, with a remainder to A's heirs, he has been at perfect liberty to give a life estate to A, with remainder to the heirs of A's wife, or to

⁸ Doyle v. Andis, 127 Iowa, 36, 102 N. W. 177, 4 A. & E. Ann. Cas. 18, 69 L.R.A. 953.

the heirs of A's mother-in-law, or to the heirs of an entire stranger. The same common law permitted the piling of one life estate upon another in the most puzzling confusion. It created life estates for the benefit of the surviving wife and husband, and for the tenant in tail, after the possibility of issue has ceased. It construed every deed which omitted the magic word 'heirs,' as conveying a mere life estate. It upheld the entailment of estates and the law of primogeniture, and all the other elaborate and multifarious devices by which the alienability of lands was held in check and the estates of great families preserved, even at the expense of their creditors. In view

of this history, the faith which can discover in the rule in *Shelley's Case* a benevolent design to facilitate transfers of title comes clearly within St. Paul's definition: 'The substance of things hoped for; the evidence of things not seen.'

Nevertheless, this reason for the rule advanced by Blackstone has been repeated over and over again, and has been the main fortress behind which its advocates have stood to meet the assaults of their adversaries. It is not too much to say, therefore, that the longevity of the rule in *Shelley's Case* has been due in a very large measure to the genius of Sir William Blackstone.

Study of Blackstone

"Swift changes have come in the last half century," says the Richmond (Va.) Despatch, "in the ideals of legal education. In the old days, the embryo lawyer was indoctrinated in the office of some experienced barrister, doing the odd jobs of the office, spending laborious hours in penning long documents of a legal nature, and reading the ancient masters of the law under the kindly guidance of the old-fashioned practitioner. Now, it is different. Law Schools have cropped up in many places; the 'case system' is making great strides; and in a theoretical course on 'practice' the law student is taught a great deal of the work which he once learned in the office. The lawyer who 'mastered' his profession in an office is becoming a less frequent type at the bar.

"Along with this new form of legal education has come the decadence of the study and reading of the old legal authors, whom the old-fashioned lawyer would not have dreamed of leaving out of the course for his office student. No

longer does Coke have almost imperial sway, and Blackstone is only referred to now and then. In the old days, Blackstone was the first author read by the law student; now, in most instances, he is referred to for sundry minor points, and a knowledge of his masterful work is not deemed necessary.

"Yet there are good lawyers living who find it refreshing and instructive to read Blackstone through every year. They realize that his 'style is superior to that of any other law book ever written.' In his clearness and logic and conciseness they find a volume without a peer in legal literature. Years ago, when a knowledge of the law was considered almost an indispensable part of the education of a gentleman, Blackstone was known and quoted widely.

"In these days of voluminous legal treatise, confusing and poorly arranged, it would be a good thing if the law writers would, at least, turn to Blackstone as a model of what a law book should be."



Federal Control over Air Navigation.

By BURDETT A. RICH.

THE swift advances of the past year toward the mastery of air navigation make it seem possible that, in spite of all the perils and disasters of the experimental experiences, we shall see at no distant future the navigation of the air become, not a mere spectacle, but an every-day business. Men have already begun to speculate upon the legal questions that will be raised by this extension of human activity into the realms of air. Passing by, for the present, the common-law questions of negligence, property, etc., the most important questions to consider are those of the power of government control. This control by a government is important with respect, first, to the business and rights of its own people among themselves; second, to the relations of the people to their own government; and, third, to international powers.

The distinction between state and Federal power over this subject is in this matter exceptionally far reaching. And if air navigation becomes as general and extensive as people now expect, the control of the Federal government over it must necessarily be very comprehensive. Constitutional grants of legislative power to Congress, which authorize a greater or less control over air voyages out of or into the United States across the national boundary, are the power of Congress to lay customs duties, to regulate commerce and the naturalization of aliens, the punishment of offenses against the law of nations, and also the general power to declare war, provide for Army and Navy, and their government and regulation. The grants of power to "define and punish piracies and felonies committed on the high seas" and to "make rules concerning captures on land and water," though not in express terms applicable to offenses or captures in the upper air,

would probably be construed to apply to them under the established principles of constitutional construction. How far the exercise of the powers of the Federal government under these various constitutional provisions would limit the powers of the states will not be here considered, but it is obvious that the range of the powers of Congress thus granted is very great.

Laws against filibustering, violations of neutrality, and all other offenses against the laws of nations, must obviously be applied to air navigation as completely as to sea voyages or land expeditions, in order to make them effective. And the power of the Federal government, under art. I. of the Constitution, § 8, cl. 10, to make all needful regulations of expeditions by airships, in order to prevent such hostile expeditions, is too clear for question. Such statutes have been repeatedly enforced against expeditions by sea, and their reason and purpose are no less applicable to expeditions by airships. The power of Congress to exclude aliens from this country, even in time of peace, or "to prescribe the terms and conditions upon which they may come to this country," has been declared in various decisions of the Supreme Court of the United States, among which is *Lem Moon Sing v. United States*, 158 U. S. 538, 39 L. ed. 1082, 15 Sup. Ct. Rep. 967. This does not seem to have been expressly based upon any single clause of the Constitution, but upon those respecting naturalization, foreign commerce, and the provisions as to war. To what extent this power might go in the way of regulating the entrance of aliens by airships is, of course, yet to be decided. But it is clear that it may properly extend to such regulations as the government may find necessary to prevent the importation of undesirable aliens into this country.

The power to impose duties under art.

I. § 8, cl. 1, involves the establishment of customhouses, and the requirement that incoming craft shall make entry through them, as is now done in the case of ships entering our ports by water.

The Federal power to regulate interstate and foreign commerce is, however, the broadest of all the Federal powers in its scope as affecting air navigation. Under this power it is incontestable that Congress can make regulations of air navigation, whether interstate or foreign, as sweeping and as minute as it now makes or can make over commerce by ship or by land transportation. In the case of commerce by water, the regulations of the Revised Statutes with respect to inspection, licenses, entry at customhouses, etc., are in many particulars extended to private yachts which do not carry passengers or freight for hire. The power of the Federal government to establish rules of navigation for the prevention of collisions and other accidents is everywhere enforced on navigable waters of the United States. The same power and the same reasons for its exercise exist in the matter of the navigation of the air, though with this difference, that the Federal power does not extend to navigable waters entirely within a state and cut off from any connection with interstate or foreign waters, while in the case of the air, there could be, in the nature of things, no such restriction. Navigable waters of the United States do not include all navigable waters in the United States, but all the air in the United States, wherever air craft might fly, would be a part of the medium of interstate and foreign commerce subject to Federal control.

The licensing and inspecting of ships, the lights they must carry, the lookouts they must have, the signals they must give, and all the various rules of navigation that reason or experience may show to be necessary, are within the established scope of the Federal power over interstate and foreign commerce; and all these, so far as they are deemed applicable, are within the Federal power over the navigation of the air. All the quarantine laws and inspection laws that have been established for incoming ships, under the Federal power over commerce, will also be precedents for similar regulations, so

far as they are deemed wise, in the case of airships. When we consider the fact that every air voyage, however short, must be taken in the great ocean of air which directly connects all places in the world without any barrier between them, and is therefore within the range of interstate and foreign commerce, the question naturally arises, What regulations of air navigation can be made by the states if Congress exercises the powers which it possesses over this subject? The power of Congress over interstate as well as foreign commerce is held exclusive by a long series of decisions, and cannot be interfered with by state laws except so far as they constitute a legitimate exercise of the police power; but even police regulations must yield when they come into conflict with the national power over commerce. *Arkansas v. Kansas & T. Coal Co.* 183 U. S. 185, 46 L. ed. 144, 22 Sup. Ct. Rep. 47, and other cases. Therefore, when it appears that the Federal control over air navigation includes the power to license airships, inspect them, establish the lights, signals, lookouts, and rules of sailing which they must observe, compel their entrance into the country at customhouses, and do all other things which Congress now does or may do with respect to ships on interstate or foreign waters, and that there can be no air navigation in this country which does not come within the scope of Federal power, it seems obvious that the subject is almost exclusively a Federal one, and that the states are restricted to mere police regulations for the public safety. Legislation at first must be somewhat experimental. It is not desirable to check the enthusiasm of those who are going forward to increasing success in traveling through the air. But some regulations to prevent danger to the public seem likely to be needed in the near future. Local laws in the exercise of the police power may be found sufficient to protect the public at large against reckless experiments over their heads. But it is certain that, if air navigation becomes extensive enough to require rules and regulations to govern it, that regulation will be the business of the Federal government.

The Place of Blackstone's Commentaries in Legal Literature

BY HON. HAMPTON L. CARSON
of the Philadelphia Bar.

THE appearance [of the Commentaries] produced what may be properly called a sensation.

Sir William Jones declared: "His Commentaries are the most correct and beautiful outline that ever was exhibited of any human science; but they alone will no more form a lawyer than a general map of the world, how accurately and elegantly soever it may be accurately and elegantly soever it may be delineated, will make a geographer." Lord Mansfield declared that he was now no longer at a loss for a book to recommend to students. Charles Yorke, the leading chancery barrister, the son of the great Earl of Hardwicke, told Dr. Warburton that if the Commentaries had been published when he began the study of law, it would have saved him reading of twelve hours in the day. Even Bentham, his most formidable antagonist, wrote of him as "an author whose works have had, beyond comparison, a more extensive circulation, have obtained a greater share of esteem, of applause, and consequently of influence (and that by a title on many grounds so indisputable), than any other writer who on that subject has ever yet appeared. . . . He it is, in short, who first of all institutional writers has taught jurisprudence to speak the language of the scholar and the gentleman." And an unknown writer has declared that "if Dr. Johnson had a right to pride himself upon the completion of his great Dictionary, that singly he had executed a great task, which, in other countries, was deemed sufficient to claim the attention of whole academies, the English may with equal justice point to Blackstone, as having in like manner reduced our law to a systematic and homogeneous whole, and performed that alone which elsewhere has repeatedly been committed to a commission of learned men."

I need not multiply words of praise; they would take, even if carefully culled, more than an hour to read. We are more concerned with the attacks. With those of Joseph Priestley, the dissenter, and the rancor of Junius, we have, as lawyers, no concern, although Blackstone saw fit to reply to them. Old black-letter lawyers greeted the work with sneers and censure, and even Mr. Hargrave, the editor of Coke-Littleton, is reputed to have said that the book was obnoxious to the charge that it was intelligible, and that any lawyer who wrote so clearly was an enemy to his profession.

One of the severest and most persistent of the charges leveled at Blackstone by his critics, particularly by Bentham and those of his school, is his optimism; that he saw nothing in existing law which called for change, and that he was a blind defender, if not a rank

apologist, of the most palpable absurdities and enormities. In this, however, he was a representative of his age. It is well to remember that things which appear to us as absurd or enormous were not so regarded by Blackstone's contemporaries. Bentham, his most formidable assailant, was twenty-five years younger than he, and introduced a new era after fifty years of warfare. I may add what is well known to every student of legal history, that while many laws were antiquated and the statute book defaced by many enactments condemned by the humane sentiments of later times, yet the law itself was more severe in theory than it was in practice, and that the benefit of clergy and the commutation of capital punishment for imprisonment or deportation tempered severity with mildness; while the numerous technical objections to indictments, which were sustained, mitigated the rigors of justice. I cannot, within my present limits, enter upon the proof of this. But I commend to your attention the results of Mr. A. V. Dicey's recent remarkable studies, published in 1905, in his profound work entitled, "Law and Public Opinion in England during the Nineteenth Century." Mr. Dicey speaks of the state of opinion between 1760 and 1830 as "the period of the old Toryism or legislative quiescence." He says "the changelessness of the law," during this time, "is directly traceable to the condition of opinion. The thirty years from 1760 to 1790 may well be termed, as regards their spirit, the age of Blackstone. English society was divided by violent though superficial political conflicts, but the tone of the whole time, in spite of the blow dealt to English prestige by the successful revolt of the thirteen colonies, was, after all, a feeling of contentment with, and patriotic pride in, the greatness of England and the political and social results of the Revolution Settlement. Of this sentiment Blackstone was the typical representative." He then quotes the well-known panegyric of the English Constitution, with which Blackstone closes his Commentaries, and declares: "These words sum up the whole spirit of the Commentaries; they express the sentiment not of an individual, but of an era." He then quotes Burke, who, he says, "had always in constitutional matters leaned strongly towards historical conservatism." He points out that Paley, a "hard-headed and honest moralist . . . was at bottom as much a defender of the existing state of things as was Blackstone." Blackstone, Burke, and Paley were, it may be fairly asserted, "political philosophers who represent the speculative views of their time." After further discussion, Mr. Dicey asserts that "it is easy to discover an explanation or justifica-

tion of the optimism represented by Blackstone," and, in commenting upon Dr. Arnold's views, he forcibly declares: "Never did the convictions of a preacher more completely misrepresent an age which he knew only by reading and tradition. The Blackstonian era was a period of national strength and of most reasonable national satisfaction." His conclusion is that "the optimism, which may well be called Blackstonianism, was then the natural tone of the age of Blackstone." Besides, it must not be overlooked that Blackstone was nearer in point of time to the great English Revolution than we of to-day are to our American Revolution, and that it was as natural for him to write in praise of the new constitutional order as for John Fiske to write of the days of 1776 and 1787.

But there is a personal side to it. Judge Dillon has said: "It is natural for some minds to revere the past, to accept the present, and consciously, or unconsciously to resist agitation and change. It is equally natural for other minds to question the wisdom of the past, to refuse to accept its lessons or results as final, to be discontented with them, and to welcome novelty as the means of effecting improvement. This mental classification obtains in the profession of the law. . . . Blackstone and Bentham stood as types or exponents of conservative and radical forces." Sir Frederick Pollock says that "Blackstone caught and expressed the spirit of his time with consummate skill, but he caught it only just in time. Hardly was his ink dry when Bentham sounded a blast that rudely disturbed the supposed finality of the common law." John Stuart Mill, in an essay upon Bentham, has gone still deeper and pointed out that "all ages of English history have given one another rendezvous in English law; their several products may be seen altogether, not interfused, but heaped one upon another, as many different ages of the earth may be read in some perpendicular section of its surface, the deposits of each successive period not substituted, but superimposed on those of the preceding. And in the world of law, no less than in the physical world, every commotion and conflict of the elements has left its mark behind in some break or irregularity of the strata." I submit that these considerations explain, if they do not excuse, the optimism of Blackstone, a teacher whose main purpose was to set forth the law as it then existed, and, under the glow and example of his mighty predecessors, Fortesque, Coke, and Hale, writing in letters writ large, *De Laudibus Legum Angliæ*.

Again, Blackstone's definition of law has been assailed, most forcibly by Austin, who was the disciple of Bentham. But Blackstone's definition is substantially that of Hobbes, one branch of which Pollock thinks profound. Austin, who commented on Blackstone so severely, although sustained by Markby, was himself commented on in sixteen chapters by Professor Clark, of Cambridge University. Professor Holland, in his work on Jurisprudence, and Judge Dillon, in his recent Yale Lectures, dissent from both Blackstone and Austin,

while the late James C. Carter, Esq., before the American Bar Association in 1890, stated with clearness and force the argument against the Austinian conception and definition. I refer to this conflict of views to emphasize the point that Blackstone's definition is not so easily disposed of as Austin in his self-sufficiency seemed to think.

Once more, Austin attacked the method of Blackstone, and sneered at his analysis, and speaks of "distortions" and "travesties" and "impenetrable obscurities," and of "turning elliptical and dubious language into arrant jargon," and asserts that he has "misled" all English lawyers since his time. This lead has been followed by Mr. J. G. Phillimore and others. To discuss these objections properly would require a separate paper. Austin, it must be remembered, was a civilian with no adequate conception of the history or character of the common law. He aimed at reducing every branch of the law to the scientific precision of a code, and, enamored of Roman models, he ignored the pregnant truth so well stated by Pollock and Maitland, that "the matter of legal science is not an ideal result of ethical or political analysis; it is the actual result of facts of human nature and history." Austin and his school never gave sufficient weight to the historical facts that English law, while largely Teutonic in its origin, became insular in its scope; that it grew irregularly during many centuries, resting largely in custom, partly in legislation, partly in treatises such as Bracton, Littleton, Coke, and others, but mainly in the decisions of courts, and had never been reduced to formulated rules or scientific arrangement.

A strong exposition of the features of difference and of similarity between the classifications of the common and the civil law is given by Professor Hammond in his introduction to Sandars's Justinian, in which he compares minutely the classical distribution of the civil law and Blackstone's classification and arrangement, based partly upon Hale's, as we have seen; a discussion which attracted the attention and elicited the commendation of Sir Henry Maine, who declared it to be the best defense of Blackstone he had seen. Professor Hammond was a scholar of such eminence, and so thoroughly a special student of Blackstone, that his views are not only weighty, but would probably convince most readers that he had given more temperate and careful consideration to both systems than the majority of those who write with the heat of zealots. In the first place he makes it plain that Sir Mathew Hale was more of a civilian than Austin, as his school has been willing to concede, and, next, that Blackstone's acquaintance with the civil law has been grossly underrated. In the next place he shows that Blackstone did not follow Hale or even Justinian slavishly; that he made important changes in the methods of both, and that his changes were intelligent and, at times, original. He sums up with this impressive statement: "The student of the common law who wishes to comprehend that law as a science can hardly find better employ-

ment than to work out the very rough and imperfect sketch here given into its details. It will prove to him that Blackstone and his system are entitled to much more respect than they have received of late from those who have taken the scientific aspect of the common law into their special keeping. But this is a small matter, comparatively speaking. The task will also show him that *all* law, properly studied, is one system, one science, and that no man has even done anything of real value to the grand edifice, unless, like Blackstone, he was willing to follow the plans of the Great Architect, revealed in history, and lay his stone in the courses prepared for it by preceding generations."

Another attack consists of a charge that he did not know the real value or worthlessness of his authorities. In testing Blackstone by the modern lights of antiquarian research it does not seem to me to be fair to assume that he ought to have known what is now known to the readers of the learnedly edited publications of the Selden Society. When he found, for instance, that Bradshawe, the Attorney General, as far back as A. D. 1550, in *Fogossa's Case* (1 Plowd. page 8) cited the *Mirror of Justices* as an authority for the guidance of the court, and that later, Lord Coke, in the prefaces to his ninth and tenth volumes of *Reports*, repeatedly declared that "in this ancient *Mirror*" you may "perfectly and truly discern," or "clearly discern," "the whole body of the common laws of England," how can anyone justly blame Blackstone for not anticipating the caution of the historian Reeve, or the scepticism of Sir Francis Palgrave, the disgust of Pollock and Maitland, or the deliberate theory of Maitland that the *Mirror* was not only apocryphal, but a deliberate imposture, being full of fables and falsehoods. If Blackstone was deceived at the age of forty-two in A. D. 1765, what excuse is there for Lord Chief Justice Tindal, in 1839, in the case *In Re Sergeants at Law*, 6 Bing. N. C. 187, declaring that the *Mirror* was "a work of great authority, and of the earliest, though uncertain date?" Or how explain how Finlason, the editor of Reeves' *History of the English Law*, in an elaborate note published in 1869, more than one hundred years later than Blackstone's first edition, wrote of the *Mirror* that "on the whole, there is no book in the law of greater use and value to a legal historian?" Surely, in the midst of this clash, while the critic of Blackstone may agree with Maitland in the final view, yet he should pause long before asserting that Blackstone had no real knowledge of our legal classics. An age which waited until Professor Vinogradoff, and he a Russian, in 1887 had discovered the original *Note Book of Bracton*, and proved that it was the basis of his great work,—a thing until then undreamed of by all the diggers among English records,—may well be modest in an assertion of Blackstone's slender bibliographical knowledge.

In fact, too much is exacted of Blackstone. His *Commentaries*, based on lectures designed for academic instruction, have been assailed

as if they ought to have met all the requirements of dissenters, statesmen, politicians, radicals, historians, civilians, bibliophiles, and specialists, as well as the assaults of time. Lawyers certainly will admit that no other legal work ever written could stand such exaction; nay they will go further, and admit that of no other book of which they have knowledge have such exactions been made. The very fact that so much is expected of him, and by such diverse critics, is a patent and substantial proof of his transcendent merit. Not even Coke and Hale, and those exponents of the civil law, Papinian and Ulpian, can escape. Critics, yes; "each day a critic;" but before we "trust in critics" let us remember that Sir Thomas More long ago told us that there are never men lacking who would teach Hannibal the art of war.

We all have often asked ourselves what are the merits of Blackstone's *Commentaries*, and what is the real service to the profession which the author performed?

The answer may be secured in two ways,—first, by reading and studying his work, and, next, by examining his raw materials. Without both of these processes, the answer must be incomplete, yet the latter is seldom attempted. Take the first. The work consists of four books of 473, 520, 455, and 426 pages, respectively, with short appendices. I am speaking of the first English edition,—1765-66-68-69. It is no great task to read it, a month will amply suffice for the most careful perusal. The first impression, I take it, will be—especially if you first examine, as you should do, the table of contents and chapter headings, aided by his own analysis—that here you have a comprehensive and general chart of public and private law, civil and criminal; a general map in outline, so to speak, of the domain of English law, and exhibiting the relationship to each other of the main divisions. Next you will be impressed by his unusual analytical power and skill. He divides and subdivides and redivides a subject with logical exactness, and his chapters and their sections are like the working drawings of an architect. Then you will be impressed with the brevity, the precision, and the clearness of his definitions, supported by well-chosen illustrations, and concise expositions of principles, and finally, you will close the work with the assertion, this was not a hard book to read, on the contrary, it was delightful,—the style is superior to that of any other law book ever written. You sum up them by saying: Here is a master-draughtsman of a legal chart,—who knows the sweep and indentations of the coast lines, their latitude and longitude; who has marked off the various divisions and subdivisions with relative accuracy; who has a due sense of proportion; who has filled up the central spaces with accurate and striking descriptions of what is peculiar to each zone; whose illustrations are well selected, and whose method of presentation is pictorial. The work leaves a definite and well-rounded picture in the mind. It is not a digest, it is not an abridgment, it is not a series of special essays, it is not a chain of quotations, it is not a discussion of cases; it

is an original work, well planned, well executed, with the materials thoroughly fused and welded into a compact, harmonious whole, as a statement of general principles.

You give the work a second reading, and then you turn to the critics and you become conscious of certain defects, omissions, anachronisms, and obsolete law. Except in the last chapter of the last book, there is no attempt to give a history of the law; there is no attempt to describe the system of equity jurisprudence; the space devoted to corporations and to contracts is insignificant and disappointing; the law of torts is but glanced at; two thirds of the first book is inapplicable to this country; the whole of the science of special pleading is obsolete; the old real actions are no longer in use; there is no opening to view of commercial law in the true sense, there is nothing about the rules of evidence; and finally, after having thus mentally consigned two thirds of his matter to the corner of the practically useless, you finally discover that his method is not scientific, that his conception of jurisprudence is faulty, that even his famous definition of law is not profound, and that the spirit pervading his work is one of blind admiration of the system which he describes.

Have you done him justice? Stop a moment, you are testing him by the light of later knowledge; from the vantage ground of recent developments and wider explorations by specialists.

Apply now the second test; and unless you do, I assert unhesitatingly that you cannot begin to understand what he did, or how well he did it. Examine his raw material. Take the first edition. Here you do not have the glosses of his editors, who have overlaid and twisted his work out of its original shape, until it resembles Sir John Cutler's silk stockings, from which much silk has been displaced by darnings of worsted; but you have his own first notes and references to authorities as he consulted and interpreted them. View him amid his own environment and confine your attention to the law as it was in his day.

To judge of Columbus as a mariner, or Galileo as an astronomer, you must contrast them with their predecessors, and measure them by the standards of their contemporaries. Pile up on fifty tables in a long hall the books from which Blackstone drew his materials: The Treatises of Glanvil, Bracton, Britton, Fleta—the Mirror of Justices, Fortescue's *De Laudibus Legum Angliæ*, Hengham's *Summa Magna* and *Summa Parva*, Littleton's *Tenures*, Wright's *Tenures*, Doctor and Student, Perkins' *Profitable Booke*, *et id omne genus*; the *Abridgments* of Fitzherbert, Brooke, Staunforde, Statham, Rolle, Viner, Comyn, and Bacon; the *Entries* of Lilly, Rastall, Levinz, and Brown; the *Reports* in folio from Aleyn and Dyer all through the alphabet, to Vaughan and Vernon, more than two hundred in number, "stout, honest old fellows in their leathern jackets," accompanied by "a flying squadron of thin reports;" the *Year Books*, Coke's *Institutes*, Plowden's *Commentaries*, Finch's *Law*

and Wood's *Institute*; the *Histories* of Sir Matthew Hale and Madox's *Exchequer*; the works of the antiquaries,—Dugdale, Selden, Spelman, and Camden; the *Statutes at Large*, edited by Rastall, Pelton, Sergeant Hawkins, Ruffhead, and Runnington; the dictionaries of Blount, Cowell, Jacob, Kelham, Spelman's *Glossary* and *Les Termes de la Ley*; the special readings and moots on statutes, such as those of *Magna Charta*, *Westminster, Uses, Habeas Corpus*, and the *Act of Settlement*; the special aids to practice in the *Natura Brevium*, *Novæ Narrationes*, and *Regula Placitandi*—*State Trials* in stately folios,—these, and many others, constituted the mass—*ingens moles*—with which Blackstone, while still in his thirties, labored for years. Of course he had guides through the wilderness; no traveler, however renowned, has lost in reputation because he had the good sense to consult or even to follow natives familiar with the way. He was profoundly affected by what had been done by the four greatest of his predecessors, Bracton, Littleton, Coke, and Hale, whose labors stretched over a period from the reign of Henry III. to the days of Cromwell,—A. D. 1250 to 1675. From Bracton he drew ample knowledge of the system perfected by the Anglo-Norman Kings, from Littleton the very essence of feudalism; from Coke the most varied, though ill-assorted, learning,—the quarry and the gravel pit of the common law,—and from Hale he undoubtedly derived the outline or skeleton of his analytical arrangement. But nothing which any one or all of these masters had done approached his own work in comprehensiveness, thoroughness, arrangement, or beauty. Bracton—although a large folio of seven hundred pages of the closest type, and in its modern dress expanded to six thick volumes—breaks off in the middle of a description of real actions—*hiatus valde defendendus*. Littleton deals only with the subject of *Tenures*; Coke's vast *Commentary* strays off without system or order, while Hale's *History* is but an unfinished sketch. But he did not content himself with these, he sought the foundation and explored tributaries, and, from the roaring and turbid mass tumbling through the centuries, carrying down Teutonic customs, Saxon dooms, Norman grafts, Plantagenet statutes, Roman philosophy, canon and ecclesiastical influences worked into the final stream of the common law as dyked and dammed by hard-headed and resolute English judges, he distilled a limpid fluid which could be quaffed without disgust. The skill with which he precipitated the sediment, and got rid of the nauseating filth, was only equaled by the mental power with which he compressed so huge a bulk into four small quartos.

This, then, was his work,—transcendent in its results as well as marvelous in its beauty. It must always be reckoned with by any student of the historical development of the law. Remember that we of to-day have the benefit of the labors of a host of scholars in fields of criticism and discovery which were not dreamed of in his day. We have the histories

of Reeve, Crabbe, Pollock, and Maitland, Dean, and Holdsworth. We have the publications of the record commissioners, the rolls commissioners, the parliamentary commissioners, the Selden Society, edited by experts. We have translations with learned notes of the Year Books, Glanvil, Bracton, Britton, and Littleton. We have the result of the labors of Thorpe, Stubbs, and Maitland in unearthing charters, rolls, and pleas by the thousands. We have the studies of the great Germans, Brunner, Liebermann, Phillips, Guterbock, and Gneist, who have thrown themselves upon Anglo-Norman times. We have the lives of judges written from original material, long unknown, by such biographers as Foss, Townsend, Roscoe, and Manson. We have the discovery recently made by the professor of history in the University of Moscow, Professor Vinogradoff, of the actual manuscript of Bracton's Note Book, which he made directly from the rolls of the itinerant judges of Henry III. and used in the composition of his Treatise. We have the benefit of the enlightened and persistent labor of the American scholars, Wallace, Bigelow, Holmes, Thayer, and Cox, —two of them Philadelphians and three of them Bostonians. We live in an age which has witnessed the results of the tremendous battering ram of Bentham upon the inconsistencies, follies, and narrowness of the common law of Blackstone's day, which was followed by the labors of Austin, Brougham, Scarlett, Romilly, Campbell, Cairns, Hatherly, and Halsbury.

And, by us in America, it must not be forgotten that we owe a debt to Blackstone which is not simply sentimental and historical, but substantial. The first American edition of the Commentaries was printed by Robert Bell, in Philadelphia, in 1771,—six years after its first appearance in England, and five years before our Revolution. The boldness of the publisher and the extent of the sales appear in the prospectus and subscription lists. This was followed by the Worcester edition in Massachusetts. For one hundred and forty years the great judges and lawyers of our Republic have drawn their earliest inspiration and knowledge from his pages. Tucker in Virginia, Wendell in New York, Sharswood,

Lewis, and Brown in Pennsylvania, Cooley in Michigan, and Hammond in Iowa, have given us special editions, to say nothing of the numerous reprints of the English editions, and the English editions themselves which have found their way to our shelves. In crowded cities, in prairie villages, in mountain hamlets, in the depths of the forests, and by the shores of the Great Lakes, or on the banks of our teeming rivers, the great Commentator has been omnipresent. Sir Frederick Pollock, in one of his most striking passages, has declared that the English common law had a new birth upon this vast continent through the appearance of this single work coeval with our Revolution,—a work fitted to expound and carry the legal system of the motherland. In nine hundred years but six names appear as the real masters in authorship of the English law,—Glanvil, Bracton, Littleton, Coke, Hale, and Blackstone.

Surely Blackstone might have slightly paraphrased the Epilogue of Coke to his Second Institutes, and written without vanity: "Thus have we by the merciful Goodnesses of Almighty God brought these Commentaries (a large and laborious work) containing an exposition of the common law, Magna Charta, and many other ancient and later matters to an end; wherein we could not follow or be guided by any other for that never any (that we have ever seen or heard of) have enterprised to publish the like in this kind; and therefore if the piercing eyes of the learned shall find out error herein, we are not without some kind of excuse. And we desire them to amend and correct those errors, according to the true sense of the law, for the which we shall not only give them thanks, but subscribe to the truth, and take it as some recompense for those our manifold and painful labours herein, which we from the beginning have undertaken for the general good and profit of the whole realme."

Time has its victims, and with ruthless hands plucks many from their pedestals. But Time also has his chaplets, with which he crowns a chosen few. Surely it is not too much to assert that among the Law's immortals will be found the name of William Blackstone.

LAW is *per se* no longer a profession. The schools are teaching less and less of Blackstone. Most lawyers do not look into old books, for society has changed so much that the old theories and the science of law are of little value.—JAMES B. DILL.

The Editor's Comments

Short Talks on Timely Topics.



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Edited by Asa W. Russell

Heirs to English Estates.

OF all the schemes devised by designing men to separate credulous people from their money, in this country, says the Boston Transcript, one of the most ancient, persistent, frequent, and successful is the representation that some American family are the heirs to an immense estate in England that has been accumulating for their benefit during many years. It is astonishing in how many instances the bait is taken. Hardly a year passes that, somewhere in the country, the minds of people are not being unsettled by the golden visions that are conjured for their contemplation. There are two such cases at the present time in Indianapolis. In each it is the old story. Property worth many millions has been

doubling and quadrupling for a century or two while the rightful heirs have hitherto remained in ignorance of their expanding treasure.

Within the last twenty years the consuls general at London have reported receiving hundreds of letters from Americans, supposing themselves heirs to vast British estates, but investigation invariably proved that their hopes were without foundation. The assumption that these great sums have been lying in the Bank of England, or in the court of chancery, without attracting the attention of the British authorities, fails to give them due credit for that keenness in money matters which is shown in their general business transactions and their methods of bookkeeping. Moreover, these great fortunes are for the most part represented as having lain in cold storage for a very long period, generally a century or more, ignoring the fact that millionaire estates are of comparatively recent development, in fact, so rare in the old days that the mere suspicion of one would have attracted wide public attention, and a way of legally disposing of it would have been found.

Among the claims that came into public notice at one time was one for the Houghton estate, said to consist of land in Massachusetts, the owner of which had died in England immensely wealthy; but an agent despatched to that country, after patient investigation, found that no one of that name worth millions of pounds had ever lived or died there. Thousands of dollars, some being contributed by those who could ill afford it, were spent in an attempt to connect with the millions said to be the rightful belongings of the Ingraham family, but the good money never came back and imagined wealth was never found. The Jennings estate, the Lawrence estate, and the Willoughby estate were other sensations in this category, but the quests were equally worthless with the others.

The great bulk of the will-o-the-wisp chasing never comes to public notice. Doubtless, thousands of the old families

have had this familiar proposition put up to them, and some of them have bitten, but have gathered their Dead Sea Fruit in a quiet way and said no more about it. There is as good a chance for acquiring wealth by digging for Captain Kidd's treasures as by chasing the long fallow fortunes of intestate Englishmen. That these tales should have been believed in the early part of the past century was not strange, but that people to-day should continue to put faith in them shows that credulity is a weakness of human nature that can always be aroused by a crafty appeal to self-interest.

Separate Judiciary Elections.

THE recommendation of the State Bar Association that separate, nonpartisan elections be held in Minnesota for members of the supreme court, says the Minneapolis Journal, is admirable. Beyond question the adoption of such a procedure would result in a bench of higher character. It would lift the state's court of last resort above partisan battle. It would enable the people to select justices without thought of their politics, and with attention concentrated on their character, their learning, and their judicial temperament. The only question is whether sufficient public interest could be excited in elections where nothing but judgeships were at stake.

The suggestion that candidates be put on the ticket without designating the party to which they belong would go far toward bringing about personal, instead of partisan, selection. In Michigan separate elections are held for justices of the supreme court and regents of the state university. But no provision is made for nonpartisan nominations, and the result is that each party puts up a ticket, exactly as in the regular elections. Thus, while the separate election feature permits concentration of popular attention on the bench, much of the benefit is lost because of the partisan contest that ensues. Occasionally the parties have united in renominating some able man, but as a rule they fail to get together. It would be easy to hold judicial elections through-

out the state on a date separate from the general election, and to make them all nonpartisan.

Under present conditions it is difficult, in many localities, for a lawyer belonging to the minority party to gain a place on the bench, no matter how well fitted he may be. Yet political questions are in no way involved in the discharge of judicial duties. The question with respect to any candidate ought to be, Does he possess the learning, the ability, the impartiality necessary to make him a good judge? It ought never to be, What are his political affiliations?

Respect for the Court.

NTO Judge Lummus's court, in Lynn, came, as the Lynn News tells us, a man with "weather beaten overalls, a shirt which was widely opened at the throat, and shirt sleeves rolled up above his elbows. The judge looked at the witness sharply. Then he said to Chief Burckes, 'Why does this man come here dressed like this?' The question was too deep for the chief to answer, so he side-stepped it. 'When was he summoned to appear?' next asked the judge. And when the chief replied, 'Last evening,' the judge remarked, 'I do not care to hear his testimony.'" It may have been that the testimony of the witness was of vital importance to the case, says the New Bedford Standard, and that Judge Lummus did an injustice by his curt refusal to hear the testimony. But, as a general principle, he was right. A judge in a higher court refused, some time ago, to consent to the naturalization of an applicant who appeared garbed in a butcher's frock. He was right too. The courts of the country are entitled to the conventionalities of respect, not because of the personality of the judge, but because the court is a great function of the public service. It represents in its place, a majesty greater than that of any monarch on earth,—the majesty of government by the people. Instead of being cheapened by that truth, that majesty is enhanced. This principle ought always to be insisted upon, even in so-called small matters.

The Readers' Comments

"Blame where you must, be candid where you can,
And be each critic the good-natured man."—Goldsmith.

"Is Mr. Roosevelt Right?"

Editor CASE AND COMMENT:—

Colonel Roosevelt had the right to criticize the Supreme Court.

What the Supreme Court says is the law, until they see fit to say otherwise. That body is not higher than the law, that is, they are not above criticism. When they reverse themselves they criticize themselves.

When Judge Mitchell in *Hospes v. Northwestern Mfg. & Car Co.* 15 L.R.A. 470, criticized the decisions of the Supreme Court, no one for a minute questioned his right, and the frequency of reference to that opinion shows the justness of the criticism.

Was Colonel Roosevelt "right" in his opinion and conclusion? That is a matter on which individuals may well differ, but each has the right to express that opinion publicly.

Was Colonel Roosevelt "right" in the words and language used? He certainly was not offensive nor in contempt. He did not advocate the breaking down of all law, by refusing to recognize the decisions of the Supreme Court as the law of the land. He was not anarchistic, his words were fervid, but not more than might be expected from an oratorical effort. He was therefore well within his rights.

His reasoning is based not on the Constitution, but on the "moral right." He thinks that should have governed the Supreme Court and the Constitution should bend accordingly. Who will say he is not right? Not I.

RALPH S. HOLBROOK.

Toledo, Ohio.

Had a Right to Express His Idea.

Editor CASE AND COMMENT:—

Often there is fog between opposing sides as to just what the question before them is. In the Roosevelt remarks on the Supreme Court made in his Denver speech, I call attention to the fact that he opposed not the Supreme Court, but its decision. Quoting from those remarks as given in your last issue:

"If such decisions as these two indicated the court's permanent attitude, there would be real and grave cause for alarm. . . . I am, however, convinced, both from the inconsistency of these decisions with the tenor of other decisions, and, furthermore, from the very fact that they are in direct contradiction to the spirit and needs of the times, that, sooner or later, they will be explicitly or implicitly reversed."

Here he clearly states his faith in the court, but on two cases he differs. In my opinion there is no stouter apostle of the integrity of

the courts than Roosevelt. Then we come to the question, Has a citizen, attorney or not, the right to express an opinion in respectful language, to the effect that the court erred in judgment? The critics of Roosevelt make their attack on that question. Certainly they do not charge that he, in an anarchistic spirit, denounced the court as such,—as an institution. There seems to be a vague impression left by his critics that he has done this. But I submit that a plain reading of his remarks discloses absolutely the contrary, while a like reading of Judge Parker's criticism discloses no such charge against Roosevelt. The real question is, as before stated, May a citizen in fair language disagree with the court? Much loose thought is indulged in by those raising a furor over the Roosevelt speech, which on subsidence presents the simple question above. It is not, Was he right in his idea of the decision? but, Had he a right to express his idea? and to that there can be but one answer.

Incidentally Roosevelt is not a lawyer, but undoubtedly he has a knowledge of constitutional law superior to that of the average practitioner, which he gathered from university work, supplemented by reading while in his various executive positions.

Let no one confuse the utterance of Roosevelt with the ranting of political extremists who, in platform and speech, do make an "attack" on the Supreme Court as an institution, advocating its abolishment, saying that it is not the friend of the people, etc. I will frankly admit that the phrase in the above quotation, "in direct contradiction to the spirit and needs of the times," does in a mild way approach the assertion that the court is opposed to the people, but still it does not distinctly attack the court as such. But that very phrase, moderate in tone, and read with the context, illustrates my point,—that a citizen in a decent, respectful address may criticize the decision of the court.

THOMAS J. CORKERY, JR.

Toledo, Ohio.

Not Justifiable but Deplorable.

Editor CASE AND COMMENT:—

In a country such as ours, the humblest citizen has the right, must have the right, to criticize the public act of any official, even the highest, provided the criticism is made in good faith, and as a friend, not an enemy, of good government. In this sense, the criticism of certain decisions of the Supreme Court, made by Mr. Roosevelt in his recent address before the Colorado legislature, was "a proper exercise of the right of free

speech." Whether the criticism was "justifiable" is a question that should not be confounded with that of the right of free speech. The right to criticize at all involves the right to criticize according to the critic's own judgment, right or wrong.

But Mr. Roosevelt's criticism, though one that he had the right to make,—for unquestionably he made it in good faith and according to his best judgment,—was not "justifiable," in the sense of being a true and just criticism. It was based upon false premises, a misconception of the duties and powers of the Supreme Court, and was essentially wrong and unjust.

It is true, as was said by Mr. Roosevelt, that the national and the state governments "should work together," and should "not leave a neutral ground in which neither state nor nation can exercise authority." And it is a fact, unfortunate as it may be, that such neutral ground has been left and does exist. Constitutional limitations, Federal and state, are such that certain lines of social and industrial activity are in a measure exempt from control or regulation by either national or state legislation. But the fault is not with the judiciary, nor can the defect be remedied by the courts.

The people have seen fit, wisely or unwisely, to limit the powers of Congress within certain lines defined by the Federal Constitution, and to limit the powers of state legislation by numerous provisions of the several state Constitutions. These limitations, though designed to prevent only unjust or pernicious legislation, frequently operate to prohibit measures which, if permitted, would be just and beneficial. Our statute books, Federal and state, present many instances in which statutes have been enacted, in good faith, to provide measures deemed necessary for the correction of some evil or for the promotion of justice and the general welfare, but which, when scrutinized, are found to be in conflict with some constitutional limitation.

In such a case, the courts have no option but to declare the statute unconstitutional, and refuse to give it effect. No matter how wise or just or beneficial the measure may be, considered by itself, it cannot be recognized as law. And it cannot become law, until after the people shall remove the limitations that prohibit its enactment.

The decisions criticized by Mr. Roosevelt are instances in which the justices of the Supreme Court, or a majority of them, were of the opinion that the statutes involved were in conflict with certain constitutional provisions. He does not question that those justices honestly entertained that opinion; nor does he question that they arrived at that opinion after earnest, thorough, and capable consideration.

But he impliedly assumes that those justices, notwithstanding their opinion that the statutes were unconstitutional and therefore void, ought to have sustained those statutes and given them effect as valid law, on the ground that such law was desirable as a remedy for certain evils. He condemns the decisions, not because they were made without due consideration, not because they were dishonest, not because they were contrary to law, but because "they are in such flagrant and direct contradiction to the spirit and needs of the times,"—as if the courts may rightly disregard the highest law of the land,—the Constitution,—and wilfully violate their own understanding of its requirements, and in order to force a decision that in their judgment, or in the judgment of Mr. Roosevelt, may be expedient, or in accord with "the spirit and needs of the times."

Fortunately our courts are not the autocrats—the arbitrary makers and dispensers of law and decision—that Mr. Roosevelt seems to think they ought to be. The decisions that he criticizes as being "against the democratic principle of government by the people under the forms of law" are directly in accord with that principle, and based upon absolute obedience to it. That principle, the very essence of democratic government, requires that every citizen and official, even the Supreme Court and Mr. Roosevelt, shall be obedient to the fundamental law that the people have enacted in the form of a Constitution. The Supreme Court recognized that principle. It did not arrogate to itself the right or the power to say what the law ought to be, or to decide the question involved according to its own conception of "the spirit and needs of the times," but held itself bound by the Constitution as the people themselves had framed it. That is democracy. That is "government by the people under the forms of law." A contrary course, such as Mr. Roosevelt assumes ought to be taken, would be subversive of government by law, and place the rights and liberties of the people subject to arbitrary action by the courts, under the plea of expediency.

The changes that are required to adapt our government to "the spirit and needs of the times" are to be sought not by perverting our courts into arbitrary tribunals, not by disregarding constitutional provisions, or perverting those provisions by false or strained construction, but by constitutional amendment and appropriate legislation. The courts can properly do no more than apply the law as they find it. Criticism of the courts for keeping within this rule is not justifiable; and coming from one of Mr. Roosevelt's standing and influence, it is deplorable.

HENRY GOODCELL.

San Bernardino, Cal.

Among the New Decisions

Brief comments on important decisions by our courts of last resort

Assault — self-defense — trespasser. One who enters another's house for a wrongful purpose is held in the Texas case of *Cox v. State*, 123 S. W. 696, to have a perfect right of self-defense, if, when discovered, he abandons his purpose, flees from the building, and is pursued and assaulted by the owner of the property.

This decision, as appears by the note which accompanies it in 26 L.R.A. (N.S.) 621, is in conformity with the few cases which have considered the question.

Carrier — unlawful delivery — credit to carrier of payment by receiver. A carrier which delivers a portion of a consignment to one not entitled to receive it is

held in the recent Kentucky case of *Louisville & A. R. Co. v. Blow*, 124 S. W. 391, not entitled, in an action against it for damages resulting from its conversion, to credit for the amount which had been collected from the bankrupt estate of the one receiving the property, as a dividend, upon the value of the portion not so delivered, under the mistaken belief that the whole consignment was delivered to him, although such undelivered portion was subsequently found and delivered to the proper consignee. This seems to be the first case passing on the right of one who has converted property to be credited with the amount which the owner has collected on account of the property from a third person who was not in fact liable. Some analogous decisions are referred to in the note which accompanies this case in 26 L.R.A. (N.S.) 555.

Criminal law — appeal — effect of escape from custody. In the absence of statute specially regulating the procedure in proceedings in the nature of review, instituted to reverse or set aside a conviction where it appears the defendant has escaped and is not in actual or constructive

custody, it is within the sound discretion of the court to determine whether the exceptions shall be argued and passed upon, the appeal dismissed, or the hearing postponed to await the recapture of the alleged offender. The recent Oklahoma case of *Tyler v. State*, 104 Pac. 919, annotated in 26 L.R.A. (N.S.) 921, determines that where a defendant has been convicted and sentenced to serve a term in state prison, and perfects an appeal to this court, it is essential that he should be in custody pending his appeal, by being confined in the county jail or state prison, as may be provided by law, or constructively in custody by being admitted to bail; otherwise he waives his right of having his conviction reviewed by the court, which will, on motion, dismiss the appeal where the defendant makes his escape from the custody of the law, and is at large as a fugitive from justice.

Criminal law — corporations — receivership. Where a corporation is in the hands of a receiver it cannot be indicted or prosecuted for acts or omissions of the latter, or of his agents or servants; his possession not being that of the corporation, but antagonistic thereto, and the latter has no right to the possession, control, or management of its property. In conformity with this rule it is laid down in the North Carolina case of *State v. Norfolk & S. R. Co.* 67 S. E. 42, that a railroad company for which a receiver has been appointed is not liable to indictment for obstructing a public-road crossing. This decision is accompanied in 26 L.R.A. (N.S.) 710, by a note discussing the authorities dealing with the question.

Death — settlement of claim — representative's action. A settlement by a person injured by another's negligence, of his claim for the injury, is held in the Kentucky case of *Louisville R. Co. v. Taylor*, 123 S. W. 281, annotated in 27 L.R.A. (N.S.)

176, to be a bar to a statutory action by his personal representatives to recover damages for the benefit of his next of kin in case death ensues from the injury. Without reference to the question of construction placed upon statutes in substance similar to Lord Campbell's act, as to whether such statutes give an independent cause of action, the general rule is that an action for wrongful death caused by an injury can only be maintained under circumstances such as would entitle the injured person in his lifetime to have maintained it; and he may, subsequent to the injury, settle with the tortfeasor for damages caused him thereby, and such settlement is a bar to any subsequent action by his widow, next of kin, or personal representative for his death because of such injuries, unless there is fraud or duress in procuring the settlement.

Evidence — comparison of handwriting or marks.

The use of punctuation marks as a means of identifying writing or carving is upheld in the Vermont case of *State v. Kent*, 74 Atl. 389, 26 L.R.A. (N.S.) 990, holding that for purposes of identifying one accused of crime, a date and initial carved in wood at the time and near the place where the crime was committed are admissible in evidence, if they contain peculiarities of punctuation and formation which are shown to be habitual with accused. This case seems to be one of first impression.

Evidence — declarations against title — admissibility.

It is a well-settled general rule of law that the declarations against his own title of a former owner of property, either real or personal, made while in the possession thereof, are admissible not only against himself, but also against those claiming under him. And though there was formerly some doubt and confusion on the subject, such declarations are now held to be admissible, though the declarant is not dead, but is alive, capable of attending court and within reach of its process. The recent case of *Abbott v. Walker*, 204 Mass. 71, 90 N. E. 405, 26 L.R.A. (N.S.) 814, follows

the modern view and holds that declarations, against title, of an owner in possession, are admissible in evidence against those claiming under him, although he is alive at the time they are offered in evidence. The decisions upon this subject are collated in a note appended to the L.R.A. report of the case.

Evidence — testamentary capacity — declaration of subscribing witness.

The courts are not agreed upon the question of the admissibility of declarations of deceased subscribing witnesses as to the testamentary capacity of the testator. In the Iowa case of *Speer v. Speer*, 123 N. W. 176, declarations of a witness who attested a will, unfavorable to the capacity of testator, are held inadmissible in evidence on the question of the validity of the will. The report of the case in 27 L.R.A. (N.S.) 294, is accompanied by a note discussing the admissibility of such declarations.

Executor — accounting — attorneys' fees.

There is a difference of opinion as to whether an executor is entitled to credit for payments to counsel employed by him for the purpose of litigation arising over the probate of the will. It is held by some courts that the duty of an executor to procure the admission of the will to probate implies authority to employ counsel where the probate is contested, and to charge the estate therefor. In other jurisdictions it is held not to be the executor's duty to defend the will, and that therefore he is not entitled to allowance for counsel fees incurred in upholding its validity. Some cases refuse to allow attorney's fees incurred in upholding the will, unless it has been admitted to probate. And still other cases hold the allowance discretionary in each instance; and by other decisions such fees are held allowable where the estate, or those who are entitled to it, are benefited by the services, but not otherwise.

The weight of authority, however, holds that where the executor has acted in good faith in attempting to establish the will, he is entitled to a reasonable al-

lowance for attorney's fees necessarily incurred. So, it is held in the recent Nebraska case of *Re Hentges*, 124 N. W. 929, annotated in 26 L.R.A.(N.S.) 757, that an executor should ordinarily be credited in his final account with the estate for reasonable attorney's fees paid by him in proceedings to probate the will of his testator.

Executor — restrictive covenants — validity. The right of an executor with a naked power of sale to bind the re-

maining part of a tract of land belonging to the estate, by a restrictive covenant in his deed to a part thereof, seems to have been considered by the courts for the first time in *Simmons v. Crisfield*, 197 N. Y. 365, 90 N. E. 956, 26 L.R.A.(N.S.) 663, holding that an executor having a naked power to sell city lots has implied authority to insert restrictive covenants in the deeds with respect to the building line of the houses to be erected thereon, which will bind the estate in favor of purchasers of the first lots, and may be enforced by them against later purchasers.

Health — bakery — regulation of location. The power of a state or municipality to regulate the location or

condition of bakeries, which apparently has been considered but once before, came before the court in the recent Wisconsin case of *Benz v. Kremer*, 125 N. W. 99, 26 L.R.A.(N.S.) 842, holding that the state may, under its police power, forbid the establishment or operation of bakeries in a room the floor of which is more than 5 feet below the level of the surface of the adjacent ground.

Homicide — convict — voluntary manslaughter. That homicide by a convict who slew a fellow convict

who was aiding the warden to administer corporal punishment to the slayer under circumstances amounting to an assault upon him may be reduced to voluntary manslaughter is determined, apparently for the first time, in *Westbrook v. State*, 133 Ga. 578, 66 S. E. 788, 26 L.R.A.(N.S.) 591, holding

it was error for the trial court to omit to charge the law relating to that offense.

Insurance — assignment — validity. An unusual question which does

not appear to have been previously passed upon is presented in *Frost v. Frost*, 202 Mass. 100, 27 L.R.A.(N.S.) 184, 88 N. E. 446, holding that a written assignment of an insurance policy to trustees to be named in the will of the assignor for the benefit of a certain person named, which is not witnessed as required by statute to make it a valid will, is not effectual to transfer title, where no delivery is made to anyone to hold for the trustees, and the assignor does not manifest an intention to hold for them himself, although the assignment is assented to by the beneficiary.

Judgment — fraud — relief. Concealment of material facts for the

purpose of securing a judgment is a species of fraud which courts of equity have quite uniformly relieved against. The fraud in this class of cases being more susceptible of certain proof than in the case of judgments procured by perjury, the courts have more readily come to the aid of the defrauded party. The only difficulty is to distinguish between facts which a party is bound in good faith to disclose and facts which belong properly to the other side, which he is under no obligation to present to the court. The great current of authority also limits the frauds for which a bill to set aside a judgment between the same parties, rendered by a court of competent jurisdiction, will be sustained, to those matters which are extrinsic and collateral to the matter tried. This question was presented in *Thomason v. Thompson*, 129 Ga. 440, 59 S. E. 236, 26 L.R.A.(N.S.) 536, holding that a judgment will not be set aside on the ground that the prevailing party practised a fraud on the court and on the adverse party by concealing the evidence of his fraud, where the particular fraud, evidence to establish which is alleged to have been concealed, was the issue on trial and there adjudicated.

The decisions dealing with the question

of concealment of evidence as ground for relief against a judgment are collated in a note accompanying the L.R.A. report of the case.

Libel—privilege—fraternal order. It is the general rule that where two persons have a common interest, every communication made by one to the other in an honest attempt to protect such common interest is privileged, in the absence of malice. This rule would seem to have especial force when applied to members of a corporation or of an association, where the parties may have a legal as well as a personal responsibility, the one to the other; and such communications if bona fide and without malice may reflect upon other members, or upon the officers or employees of the corporation or association, or even upon third persons with whom it may have dealings. The rule was applied in *Holmes v. Royal Fraternal Union*, 222 Mo. 556, 121 S. W. 100, holding that a written communication from the president of a fraternal society to members at a certain place, to the effect that the collecting agent of the order at that place was behind in his remittances, and that it had become necessary to withdraw authority from him, and directing the members to pay their dues to another, is qualifiedly privileged,—especially where he had threatened to withdraw from the order and take its members with him, so that the society had a right to guard against such threat on his part.

The report of this case in 26 L.R.A. (N.S.) 1080, is accompanied by a note discussing the cases pertaining to qualified privilege of communication between members of an association or of a private corporation.

Master and servant—delegability of duty to warn or instruct. The conflicting cases on this subject may be best arranged

and compared with reference to three general classes of dangers to which servants are subjected. The first of these comprises those dangers which are non-transitory, which generally exist when the servant goes to work, but which may arise afterwards,—dangers which

may be termed "impending dangers." The second class of dangers comprises those perils which arise necessarily during the progress of the work, which are therefore to be expected, and which may be guarded against,—dangers which may be termed "transitory and recurring dangers." The third class of dangers comprises those which arise during the progress of the work, which are momentary and unnecessary,—dangers which may be termed "transitory and nonrecurring dangers." The courts seem to be in accord on the rule that the master's duty to instruct or warn as to impending dangers cannot be delegated.

When the question is as to the delegability of the duty of the master to warn servants of dangers necessarily recurring during the progress of the work, the conflict in the cases becomes marked. In this class of cases the dangers are unavoidable and are incident to the work in which the servant himself is engaged, or to other work in the same place which other servants are carrying on. They are dangers which the master can and should provide against. When he has employed a competent person for this purpose, some courts say he has done enough, while others declare that the duty to warn is absolute. It is merely a question of arbitrarily drawing the line marking the point at which the master's duty ends and the servant's assumption of risk begins.

When it comes to the question of extending the master's personal responsibility for failure to warn to those sudden, unexpected, and unnecessary dangers created by the negligence of coservants, there is considerable confusion in the cases.

The cases pertaining to the question are exhaustively presented in a note appended in 26 L.R.A. (N.S.) 624, to *Anderson v. Pittsburg Coal Co.* 108 Minn. 455, 122 N. W. 794, holding that while the duty of the master to warn the servant of impending danger, as distinguished from the duty to instruct a youthful or inexperienced servant, may not, under all circumstances, be absolute and nonassignable, the general rule is that, when an employee is at work in a place safe in itself, but which, by virtue of some inde-

pendent work done for the master's purposes, becomes dangerous unless prior warning of impending danger be given, and when the master has required such warning to be given, or has customarily assumed to give such warning by an employee, the person charged with that duty is a vice principal.

Mechanics' lien— Mechanics' liens are disconnected lot. of purely legislative creation, and ordinarily the extent of the land to which they attach depends upon the language of the statutes.

The recent Pennsylvania case of *Wirsing v. Pennsylvania Hotel & S. Co.* 226 Pa. 234, 75 Atl. 259, annotated in 26 L.R.A.(N.S.) 831, holds that a mechanics' lien on a hotel and sanatorium will extend to a lot separated from that containing the building by other property, but containing a mineral spring which is intended as part of the sanatorium property, where the statute permits the lien to attach to such curtilage as is reasonably needed for the general purpose for which the structure is erected belonging to the same owner.

Name—Change of, without legal proceedings. The conclusion that statutes providing a mode of changing one's name do not abrogate, but are in affirmance and aid of, the common law, was reached in *Smith v. United States Casualty Co.* 197 N. Y. 420, 90 N. E. 947, 26 L.R.A.(N.S.) 1167, holding that a man may, in good faith, for an honest purpose, change his name without resorting to legal proceedings by adopting a new one, and for many years transacting his business and holding himself out to his friends and acquaintances thereunder, with their acquiescence and recognition.

Oral contract—fence—validity. There is a sharp conflict of authority as to whether contracts in relation to division fences must be in writing to be within the statute of frauds. Most frequently, of course, the question is whether a contract in relation to such a fence is a contract in relation to an interest in lands, within the meaning of the statute requiring such contracts to be in writing. The weight

of authority seems to be to the effect that such a contract is not within the statute. In the recent Kansas case of *Walker v. McAfee*, 107 Pac. 637, annotated in 27 L.R.A.(N.S.) 226, it is held that neither the statute of frauds nor the act relating to partition fences renders unenforceable an oral agreement by the occupants of adjoining lands that, until the arrangement is changed by mutual consent or the withdrawal of one of the parties, each shall maintain one half of a division fence.

Partnership—right of survivor to wind up affairs. In the recent Massachusetts case of *Hewitt v. Hayes*, 90 N. E. 985, 27 L.R.A.(N.S.) 154, it is held that upon the death of the partner to whom the exclusive management of the business has been committed, the right to wind up the affairs of the partnership devolves upon the surviving partner, and not upon the executor of the managing partner, and the surviving partner may require the executor to deliver to him all firm assets in his possession, including real estate. This case is unique in that it is apparently the first in which it was attempted to set aside the general rule that the surviving partner is entitled to the possession of the firm property for the purpose of winding up its affairs, on the ground that the deceased partner had sole management of the business prior to his death, and that therefore his representatives should have possession of the property.

Witnesses—husband and wife—arson. The question of the competency of one spouse as a witness against the other in the prosecution of the latter for arson in setting fire to the former's property was considered, apparently for the first time, in the Washington case of *State v. Kephart*, 106 Pac. 165, 26 L.R.A.(N.S.) 1123, holding that a provision in a statute forbidding a wife to testify against her husband, that it shall not apply to a criminal action or proceeding for a crime committed by one against the other, does not operate to render the wife a competent witness in a proceeding against him for burning her buildings.

New or Proposed Legislation

A glance at the labors of our lawmakers.

Municipal Treatment of Inebriates.—Several months ago the city council of Columbia, South Carolina, writes Mr. C. S. Monteith, of that city, decided that instead of sending inebriates to jail or the workhouse, that they would give them, free of charge, a liquor cure. The city accordingly established a sanatorium, and inebriates were treated by a local company known as the McKanna Three-Day Liquor Cure. Of this experiment the Columbia State remarks:

The administering of the McKanna three-day liquor cure by the city of Columbia to white pauper inebriates was met with an unexpected amount of success. W. H. Gibbs, mayor of Columbia, recently wrote Dr. O. E. Thomas, president of the McKanna company of Columbia, to express his gratification at the results of the cure.

The city's sanatorium was opened on July 28, and since then thirty-seven white inebriates have been given the McKanna treatment free of charge. These men were constantly before the recorder, and several of them spent the greater portion of their time in jail before they took the treatment. Since taking the McKanna cure, not a single one of them has been before the recorder. The majority of them have obtained positions or are working at their trades.

In his letter to Dr. Thomas, Mayor Gibbs said in part:

"The department was installed in the humanitarian hope of benefit to well-nigh hopeless fellow men. In nearly all of the thirty-odd cases thus far, these men have been lifted from the gutter and restored to normal physical and psychical condition, and to useful citizenship, thus receiving benefit themselves and conferring it in happy measure upon wife and children, mothers and friends and fellow citizens.

"Another development that we did not look for has come about. Under the generous terms made by Dr. McKanna through you, and under the economical

administration of the cure through your assistance, we find that its cost to the city is much more than repaid by the saving of expense of maintenance of these patients as prisoners. No man with a heart can fail to have it touched by their gratitude for their reformation and by the touching thanks of their families; no man with a brain can deny the efficiency of a treatment whose benefit is so apparent."

Mayor Gibbs is of the opinion that the McKanna three-day liquor cure should be established in every city as an adjunct to the police department.

Regulating Aviation.—The Germans, who are intensely practical in everything they undertake, says the New Orleans Picayune, have evidently made up their minds that aviation has come to stay, and, that being the case, it must be regulated, and both the aviators themselves and the general public protected from the risks and dangers inseparably connected with the new science. Accordingly laws have been promulgated governing the conditions under which aviation may be practised in Germany.

According to the new regulations, every aviator must have a license, issued by the provincial or municipal authorities. This license is issued only after a thorough examination into the candidate's mechanical knowledge and a private demonstration of his skill in aviation.

After the certificate has been obtained, the aviator must invariably notify the police authorities three days in advance of the day of his flight. He must submit to police inspection of his equipment before making an ascent, and must submit to police interdiction of a flight if, in the judgment of the authorities, conditions make the attempt dangerous.

Even after complying with all these conditions an aviator must not fly over towns or villages, but must restrict himself to the open country or to the courses

of rivers or streams. If he disobeys any of these regulations his license may be taken from him, and he may also be subjected to a fine. Naturally, the German aviators are not happy under these restrictions, which are deemed to be too severe.

While other countries may not feel disposed to adopt such drastic ordinances as those mentioned, they are pretty certain to discover eventually that aviation must be regulated in some way, if frequent accidents are to be prevented.

At first blush it appears rather ridiculous to talk about big governments entering into negotiations for the framing of treaties regulating aviation as far as it applies to international relations. The crossing of international boundaries by *aéroplanes* and dirigibles has become a common thing in Europe, and some recent achievements in this country indicate that the day is not distant when airships will cross from this country into Canada or into Mexico, and *vice versa*.

Mexico has already approached our government on the subject of an aviation agreement, and our Secretary of State has invited Mexico to submit a draft of the proposed agreement. A preliminary treaty is proposed by the Mexican agent, which can be revised and improved as the navigation of the air is further developed.

In Europe it has become a common thing for *aéroplanes* and other classes of airships to cross from one country to the other, and several governments are now engaged in formulating agreements to prevent smuggling or the importation of undesirable persons. With the further development of the *aéroplane* there would be serious danger of illicit traffic across the border from both Canada and Mexico. Even now Chinamen are smuggled into the country across both northern and southern borders. *Aéroplanes* would no doubt be employed in evading the laws in this respect, with small chance of detection. Just how to prevent *aéroplanes* from crossing the border is the problem confronting everybody.

The licensing of every flying machine and enforced stoppage at the frontier are

among the measures evolved, but it is realized that a machine might fly so high as to be beyond all attempts at stopping it, or even identifying the particular machine involved.

The New Wireless Law.—After July 1, 1911, says the New York Sun, all steamers carrying fifty or more persons, passengers and crew, will be held in port till equipped with wireless telegraph apparatus. A circular calling attention to the recently enacted law is being sent out by the Secretary of Commerce and Labor. This somewhat belated fruit of the wreck of the Republic in January, 1909, is another illustration of the well-worn adage that "tis an ill wind that blows nobody good."

Such advances have been made in transportation by water within the last twenty-five years that sea voyages are no longer perilous adventures, but mere incidents of travel. Statisticians have made figures to show that cruising on a modern steamer is as safe as living in a large hotel. The relative rates of accident insurance charged upon the various classes of "risks" show that travel by sea is safer than working on a farm. The employment of wireless telegraphy for the purpose of sending out distress signals constitutes one of the most important steps taken to secure the safety of the passengers and crew. The law is altogether reasonable. The expense of installing wireless telegraphy is not heavy, and the many uses to which it may be put commended it to the best-equipped steamers before the law was passed to compel its installation.

A figure of the past is the passenger who could be described as:

"The adventurous man, who durst the deep explore,
Oppose the winds and tempt the shelfy shore."

Travel on first-class steamers has become practically ferry-boat riding. With the added safeguard of wireless it becomes even more so. The problem of the rival lines nowadays is how best to amuse their patrons to prevent the crossing from being humdrum.

Bar Associations

What the Bar Associations are doing and saying.

Banquet Tendered President Farrar

"Edgar H. Farrar, president of the American Bar Association, was the guest of honor at a banquet at the Grunewald Hotel," says the Picayune, "the same being tendered by the Louisiana Bar Association and members of the American Bar Association."

Before the banquet was served, an address was made by E. H. Randolph, president of the Louisiana Bar Association. His subject was, The Appreciation of the Bar of the State of the Election of Mr. Farrar as President of the American Bar Association.

"It is a grateful occasion to be here tonight to express our appreciation of the high honor conferred by the American Bar Association in the selection, for its president, of our distinguished brother lawyer, Edgar H. Farrar," said Mr. Randolph. "It is not ungracious to say that in this selection the beneficiary confers upon the association the same honor which he received. The man honors the place no less than the place honors the man."

In his toast to "Our Guest at the University of Virginia," Mr. E. M. Hudson said:

When he entered the honored precincts of that high school, like every other student, he received a message,—inaudible to the ears, but sounding in deep tones in the soul of him. The import of this message is best expressed, I think, in Shakspeare's words:

"If you were born to honor, show it now.
If put upon you, make the judgment good
That thought you worthy of it."

A message, indeed, of welcome, of warning, and inspiration.

One of our poets, from a heart wrung with anguish, has bewailed these modern times:

"Of atom force and chemic stew
Nor Socrates nor Cæsar knew;
But the old ages knew a plan—
The lost art—how to mold a man."

But this art has not been lost forever, for Thomas Jefferson found it, planted it in the University of Virginia, where it has taken deep root, grown, flourished, and borne ripe fruit in the lives of its students.

Charles F. Buck in dealing with his subject, "Our Guest as a Lawyer," referred to some of the notable achievements of Mr. Farrar. He referred to the many constitutional questions which Mr. Farrar has taken up and fought to successful conclusions when the odds seemed at first blush to be against him.

Judge John St. Paul spoke on "Our Guest in His Relations with the Judiciary." He told of many of the notable characteristics of Mr. Farrar. He said that in a lawsuit he sometimes made a terrible arraignment of an argument advanced by opposing counsel, but never directed the arraignment against the man.

J. J. McLoughlin, in speaking on "A Little Nonsense Now and Then," kept the banqueters convulsed with laughter. Early in the evening reference had been made to the greatness of T. J. Semmes, deceased.

"You don't want to forget the Creole lawyer who wrote the Civil Code of Louisiana, when you talk about great lawyers," said Mr. McLoughlin.

"Most any lawyer can go to the Supreme Court and win the prize in the 'lottery' once in a while, but every lawyer cannot 'cuss out' the court and be right every time."

Congressman A. P. Pujo, of Lake Charles, was the last speaker next to Mr. Farrar. He spoke on Mr. Farrar as "Our Guest as a Citizen." Mr. Pujo has been an intimate friend of Mr. Farrar's for the last twenty-five years. He paid him a marked compliment when he said:

"Had he not been a good citizen he could not have been the great lawyer that he is, and could not have attained to such prominence in the profession."

Mr. Farrar as "Our Guest" responded last. With a voice full of emotion he declared that he was simply overwhelmed. He referred to the fact that he had been a practising lawyer in Louisiana for thirty-eight years, and that it was particularly pleasant to him to know that the men with whom he had exchanged blow for blow still loved him as a man and a lawyer.

"If I have made any wounds I am willing, ready, and anxious to heal them," he said.

He said that the honor conferred on him by the American Bar Association was greater than any honor which could have been conferred on him by any Kingdom and signed by the chancellor of any Empire. He said that it was right that the Louisiana Bar Association should take the greater part of the honor.

He claimed much for the judiciary, and said the duties devolving on the members of the judiciary were the greatest and most responsible ever conferred on men. He pleaded for a clean bar, for from the men of the bar must come the members of the judiciary, which make the bulwark of American liberties.

In referring to the American Bar Association, he said it was an association to hold up the standard of the American bar. "It is founded on a code of ethics and good laws," he said. "Its purpose is to teach the millions of people in this country that they must make the laws which they must later obey, and that they must not change these laws blindly."

Law Reform

Bar Associations in many of the states, says the Philadelphia Press, have taken up the cause of reformed judicial procedure. Justice Brewer, in his lifetime, sought earnestly to impress on lawyers the necessity of such reform. The criticism of court methods and of their failure to answer the purpose for which they were created, simply, promptly, and economically has become very loud and frequent. It is far better that reforms

should come from within than be forced on the courts and the bar from without. President Taft has been very emphatic in expressing his dissatisfaction with the procedure of our courts, both in criminal and civil cases.

Recently one of the monthly magazines contained a long list of cases decided, which was appropriately entitled, "Follies in Our Criminal Procedure." One of the cases cited was from Montgomery county, in Pennsylvania, where the offender escaped through the quashing of the indictment, because the latter stated correctly the exact date on which the offense was committed, instead of saying "on or about" a certain date. A South Carolina case is given which illustrates how justice is defeated by legal legerdemain when ruthless logic is untempered by common sense. Two pianolas had been stolen, and the thief was indicted for the larceny of "two pianos." His lawyer argued that he could not be convicted of stealing a piano, because it was not claimed that a piano was stolen, and he could not be convicted of stealing a pianola on an indictment charging the theft of a piano. This logic was irresistible and the accused was discharged. He was immediately rearrested and a new indictment charged him with the larceny of a pianola, but when the case came to trial his lawyer was able to prove by the testimony of experts that a piano and pianola were the same thing. This being established to the satisfaction of the court, and as the defendant had already been tried for stealing the piano, the court ruled that he could not be tried twice for the same offense, and he was again discharged, and went unpunished.

This, basing the administration of justice on words rather than substance, brings the courts into a contempt from which they cannot escape except by reform from within. The South Carolina case is an extreme one, yet failures of justice by interpretation differing from the pianola case in degree rather than in kind are very common. The bar in many states is quite alive to this abuse. The State Bar Association of Kansas has brought about a considerable measure of judicial reform in that state. The

Bar Association of the city of New York has before it an elaborate committee report outlining methods of reform in court procedure. A Massachusetts commission has recently made a report on that old abuse of "delay of justice." The American Bar Association has the subject under consideration by an influential committee.

Verdict by Three Fourths of Jury

In discussing the question of a change in the method of selecting jurors for the courts, Mr. A. C. Binswanger, of the Baltimore bar, called attention to the fact that at the annual meeting of the Maryland State Bar Association, at Old Point Comfort, in July of last year, a resolution was introduced by Mr. William B. Smith, former member of the house of delegates, asking that a committee draft a constitutional amendment providing that in all civil actions and in all criminal cases not amounting to felony three fourths of the jury may render a verdict, and that the jury in criminal cases shall be judges of the facts only, and, further, that this amendment be submitted to the general assembly for passage.

Mr. Binswanger said:

"Why should unanimity be required in juries when it is no longer required in any human undertaking or obligation. The old common law was jealous of the liberty rights of the individual. Our present test is in the greatest good to the greatest number, the individual counts for nothing; he is only a factor in making up the general average. The old Greek idea of the state was that the best governed one was wherein the slightest wrong done to the meanest individual was the greatest crime against the commonwealth,—take care of the little things and the big ones are protected.

"Where a man is in jeopardy for his life, or the punishment be life imprisonment, unanimity might well be required, and he escape if the jury so find; in all other cases a majority of the jury are as capable of rendering a verdict that is proper and exact justice as the electorate at any election where one vote can determine the result. When the judges of

our highest tribunal divide evenly on a question, the decision of the lower court is affirmed, whether right or wrong; when they divide five to four, rights of property and liberty, no matter how large or important, are adjudicated. Then why cannot the common people who make up juries divide on questions of fact, when those learned in the law divide on matters of law and fact? At the present writing it is only necessary for a defendant to get one member of the jury on his side, and the jury is hung; and the same with the criminal, although the state and the litigants are put to great expense."

Lawyers' Court of Compulsory Arbitration

In his address as president of the Mississippi State Bar Association, Hon. Thomas H. Somerville said:

The tendency of the lawmakers to create new courts and administrative agencies reminds us of the lawyers' court of compulsory arbitration recently inaugurated in Pittsburg, Pennsylvania. It is reported that this novel tribunal is giving entire satisfaction to the bar association by which it was created, that it has saved the work of the judges of the common pleas courts in cases tried without appeals, and that it has a most deterrent effect upon vicious and unmeritorious litigation. Counsel for either party may have the case referred to the lawyers' court, in accordance with the prescribed rules. Either party may appeal from an award. If no appeal is taken, execution goes as upon a judgment. It is now proposed to have questions of law certified in this court so that such questions may be passed upon without a retrial of issues of fact. Such a measure should, of course, be so guarded as not to interfere with constitutional rights, nor invade the province of the courts, but be made the means of helping and promoting their work. It is said that members of the able and honored Natchez bar, whose guests we are, have been long accustomed, by voluntary agreement, to settle questions of law and fact in their cases, without the labor and expense of court and jury trials.



Law Schools

A department dedicated to the judges and
lawyers of the future.



Cincinnati Law School.

The Cincinnati Law School began its seventy-eighth year's work on September 27th. The opening address was given by Hon. Albert Bettinger.

Eldon R. James, who has for a number of years been instructor, has been elected to a professorship in the school. The subject of constitutional law, taught for so many years by Prof. Henry A. Morrill, and after his retirement from the school, by Governor Harmon, will hereafter be taken by Prof. Robert C. Pugh. Sales and insurance will be taught by Benton Oppenheimer.

Columbia University.

When the Columbia University resumed its regular sessions September 28 a new law and political science building was opened to students. It will be known as Kent Hall. It cost approximately \$500,000. The sum for building it was given anonymously.

Built of over-burned brick, trimmed with limestone, the new structure is set upon a base of granite extending from the street level to the level of the first floor. Its exterior dimensions are 205 feet by 53 feet 8 inches and its height is about 82 feet above the street level.

As might be expected of a law school Kent Hall has a well-equipped library, but it is more than that,—it is extraordinary in size and completeness. It extends the entire length of the building. The shelf capacity is 25,000 volumes, and there are tables and chairs for about 335 students. Additional shelf room will be provided by book stacks for 80,000 volumes, and there is said to be available space for double this number.

No attempt is made by the Columbia Law School authorities to arrange the work for the convenience of students otherwise occupied during the day. In improving the standard of the school the requirements for admission have been

steadily increased, so that the school since 1903 has been upon a post-graduate basis. Kent Hall gets the name from Chancellor James Kent, author of the Commentaries. Chancellor Kent was connected with the Law School for more than fifty years.

Georgetown University Law School.

Opening exercises of the Georgetown University Law School were held in the assembly hall before an audience of students and friends that filled every seat, packed the aisles and open places, and overflowed into the hall.

With an enrolment larger than on any previous year and an entering class of 268 strong, the school starts out with a brighter promise than ever before.

Justice Clabaugh referred to the good fortune of the school in obtaining the services as a member of the faculty of Hannis Taylor, former ambassador to Spain, who will lecture on international law and foreign relations of the United States.

Among those seated on the platform were Chief Justice Shepard, of the court of appeals; Justices Gould and Wright, of the district supreme court; George E. Hamilton, D. W. Baker, J. Nota McGill, Charles A. Douglas, District Attorney Clarence R. Wilson, William Henry White, John W. Yerkes, and J. C. Adkins.

University of Pennsylvania.

The Law School of the University of Pennsylvania opened September 26th, when many changes in the curriculum were announced. The course in Blackstone, which has been given for many years, has been found antiquated and has been discontinued. The following new courses, which are elective, have been added this year: Specific performance, fraud, accident and mistake in equity, equitable doctrines, domestic relations, criminal procedure, and civil procedure.

New Harvard Law Course.

By a recent vote the corporation established a fourth year of work, leading to the degree of J. D. (Juris Doctor). This will be conferred on graduates of the Harvard Law School, and those of other schools, qualified to be members of the Association of American Law Schools, upon one year's residence after receiving the bachelor's degree.

George Washington University.

The Department of Law of the George Washington University opened its doors September 28 for its forty-sixth session. Its course of instruction, originally covering but two years, has been gradually expanded and strengthened, following the recommendations of the American Bar Association, until it now requires three years.

To supplement moot court work and to give the student a more finished legal education, courses in brief making and the preparation of legal instruments will be inaugurated this coming season.

University of South Carolina School of Law.

Professor John P. Thomas, Jr., was elected dean of the Law School at the University of South Carolina at the last meeting of the board of trustees.

The new dean graduated at the University in the class of '72-73 and was admitted to the bar of South Carolina in 1880. He has practised law in Columbia, South Carolina, for the past thirty years, and is now a member of the firm of Thomas & Lumpkin. He is the author of Thomas's Digest of the Reports of South Carolina and of several pamphlets on historical and literary subjects. For several years past he has been one of the commissioners from his state on uniform state laws. The legislature of South Carolina at its last session passed an act raising the standard of admission to the bar, and providing for a state board of examiners. This will doubtless result in an increased attendance on the Law School, which is the only one in the state.

Washington College of Law.

The Washington College of Law began its fifteenth year on Friday evening, September 30th, with halls crowded to their full capacity. The dean and founder, Mrs. Ellen Spencer Mussey, presided, making a brief opening address, closing with an appeal to the student body to "look for the best in their fellow students and the faculty, and in return to give their best as the faculty would also do." Prof. Hegarty spoke on the common law as expounded by Blackstone; the new member of the faculty, Prof. George Amory Maddox, spoke on his subject, the law of personal property; Prof. John E. Laskey spoke on the law of evidence, which he has taught successfully for fifteen years; Prof. William Symons, of the Patent Office, spoke on the law governing registrations and patents; Prof. Chas. W. Fitts spoke on the general subject of pleading; and Prof. Helen E. Jamison, assistant professor of common-law pleading, spoke of the outlines recently prepared for the junior class. Prof. Paca Oberlin spoke on his subjects, constitutional law and corporation law.

Prof. Alfred D. Smith, instructor in moot court practice, and Mr. George H. Macdonald, clerk of the court, told amusing and instructive stories of the moot court experiences. Miss Emma M. Gillett, a well-known real-estate lawyer and one of the founders of the school, made a strong appeal both to men and women to prepare themselves to be useful as citizens and in the home to use the gifts for the betterment of home and state.

The enrolment of the college is the largest in the history of the school, and maintains its record of the past two years of about equal numbers of men and women in the student body.

The dean reports that all the graduates who took the examination for admission to the district bar in June passed, and that several more will take the examination in December. This college was established primarily to give women at the Capital the opportunity to study law denied them in the other white law schools.

New Law Books

"Race Distinctions in American Law."—By Gilbert Thomas Stephenson, A. M., LL.B. (D. Appleton & Co., New York.) \$1.50 net.

"This book," states the author, "is not meant to be a legal treatise. Although the sources are, in the main, constitutions, statutes, and court reports, an effort has been made to state the principles in an untechnical manner." Mr. Stephenson's work, however, is well worth perusal by the practising lawyer. It deals with a vital problem affecting millions of our citizens, and calmly discusses the subject from the standpoint of the laws of the states and nation. It presents such interesting questions as the so-called "Black Laws," "Intermarriage and Miscegenation," "Civil Rights of Negroes," "Separation of Races in Public Schools and Conveyances," the "Negro in the Court Room," "Suffrage," and "Race Distinctions" generally. The text is supported by copious citations and references, and is especially valuable as a comparative study of our laws.

"A Lawyer's Recollections."—By George A. Torrey, of the Massachusetts Bar. (Little, Brown, & Co., Boston.) \$1.50 net.

The author, who has followed the law for a period of half a century, has set down in an entertaining way some of the interesting experiences of a long and useful life.

Mr. Torrey began his professional career as a country lawyer, but later acquired a large city practice and became counsel to the Fitchburg Railroad. He has gathered in his book much that is of interest regarding the customs of a half century ago, together with many anecdotes of bench and bar. The work will interest both general readers and lawyers. He relates that the senior partner of the firm with which he studied "used to arrive at the office every morning at eight o'clock, remaining until one, when he dined. Returning at two o'clock he

stayed until six, when he went to supper. After supper he returned to the office and never left before eight o'clock, and sometimes later, receiving clients and doing office work in the evening exactly the same as during the day. That is the way lawyers lived and worked in 1859, and there was very little nervous prostration nor were many long vacations required."

"From Court to Court."—By Eugene F. Ware of the Kansas City Bar. Printed by the author. 4th ed. \$2.

This pamphlet sets forth the method of taking cases from a state court to the United States Supreme Court. It discloses the two methods by which this may be accomplished, and is replete with valuable suggestions. It discusses such topics as "What is the highest court of a state?" "What is a Federal question?"—as well as how to raise such a question, and the procedure involved in perfecting and prosecuting an appeal. The treatise is accompanied by a collection of forms and a tabulation of rules showing what to do under forty-two different conditions.

Archer's "Ethical Obligations of a Lawyer."—1 vol. \$3.

Hagar & Alexander's "Bankruptcy Forms, Annotated."—1 vol. Buckram, \$6.50. Sold in combination with Collier on Bankruptcy, 8th ed. 1 vol. (Price, \$7.50.) The two in one order, \$13.50.

"The National Bank Act and Its Judicial Interpretation."—4th ed. By Albert S. Bolles. 1 vol. Buckram, \$5.

Cook's "Annotated Criminal Code and Penal Law, 1910."—(New York.) \$7.50.

Gilbert's "Annotated Code of Civil Procedure."—(New York.) 1 vol. \$10.

"The Complete U. S. Commissioner's Manual of Practice."—By Barrett R. Welling-ton. 1 vol. \$2.

Frost on "Incorporation and Organization of Corporations."—4th ed. 1 vol. \$5.

Hun & Smith's "Official Court Rules."—(New York.) 1 vol. \$4.50.

"Appellate Jurisdiction of the Federal Courts."—By Frank O. Loveland. 1 vol. \$6.50.

"Bender's Health Officers' Manual and Public Health Law of the State of New York."—Edited by Charles J. Hailes. 1 vol. Buckram, \$2.

Battershall on "Domestic Relations."—1 vol. \$5.

"Cases on Insurance."—By George Richards. 1 vol. Cloth, \$3.50.

"Supplement to Drinker on the Interstate Commerce Act."—By Henry S. Drinker, Jr. 1 vol. Buckram, \$5.

"Index-Digest of the Reports, Rulings, and Decisions of the Interstate Commerce Commission."—By A. B. VanBuren. 1 vol. \$5.

"Annotations for the Birdseye, Cumming & Gilbert's Consolidated Laws, 1910."—(New York.) \$1.

Wheless on "The Laws of Mexico in English."—A compendium of Mexican law, officially authorized by the Department of Justice of Mexico. 2 vols. \$10.

Bender's "Practice Time Table." —(New York.) 1 vol. \$2.

"Blackburn on Sales."—3d English ed. By W. N. Raeburn and L. C. Thomas. 1 vol. Half calf, \$7.50.

Perry on "Trusts and Trustees."—6th ed. 2 vols. \$13.

Bender's "Village Laws."—(New York.) 1 vol. \$5.

"Report of the Fifth Annual Meeting of the Mississippi State Bar Association."

Recent Articles in Law Journals and Reviews

Alaska.

"The Forty-Ninth Star on the Flag."—17 Case and Comment, 228.

Attorneys.

"A Point in Professional Ethics." (Defense of One Known to Be Guilty.)—14 Law Notes, 87.

Aviation.

"Aviation and Wireless Telegraphy as Respects the Maxims and Principles of the Common Law."—42 Chicago Legal News, 31.

Brokers.

"Mercantile Agency."—32 Australian Law Times, 15.

Canal Zone.

"Canal Zone Laws and the Judiciary."—17 Case and Comment, 220.

Christianity.

"Christianity as Part of the Law of Pennsylvania."—15 Dickinson Law Review, 1.

Conspiracy.

"Conspiracy in Fraudulent Entries of Government Land."—71 Central Law Journal, 219.

Costs.

"Costs of Next Friends."—32 Australian Law Times, 13.

Criminal Law.

"The Powers of the Home Secretary and the Court of Criminal Appeal."—74 *Justice of the Peace*, 422, 434.

Dentists.

"Unqualified Dentists."—74 *Justice of the Peace*, 410.

Equity.

"A Glance at Equity Jurisdiction in Certain Lines, and at the Question Whether It Is Duly Appreciated,—a Criticism of the case of *Strawn v. Trustees of Jacksonville Female Academy*."—71 *Central Law Journal*, 203.

Evidence.

"Shall the Legal Presumption of Innocence be Regarded, by the Jury, as Evidence."—16 *Virginia Law Register*, 340.

Fraudulent Conveyances.

"Frauds and Preference."—42 *Chicago Legal News*, 59.

Fuller.

"Chief Justice Fuller."—14 *Law Notes*, 86.

Injunction.

"Origin of the Writ of Injunction."—71 *Central Law Journal*, 168.

Korea.

"The Opening of Korea by Commodore Shufeldt."—25 *Political Science Quarterly*, 470.

Landlord and Tenant.

"Underlessee and Covenant not to Assign."—32 *Australian Law Times*, 14.

Law Reform.

"Pleading Reform for Illinois."—42 *Chicago Legal News*, 30.

License.

"The Licensing (Consolidation) Act, 1910."—74 *Justice of the Peace*, 447, 458.

"Publicans and Music Licenses."—74 *Justice of the Peace*, 409.

Master and Servant.

"The Proposed Compensation Law."—71 *Central Law Journal*, 185.

"Judicial Views of the Restriction of Women's Hours of Labor."—25 *Political Science Quarterly*, 420.

Obscenity.

"Varieties of Criteria of Guilt in Obscenity Cases."—71 *Central Law Journal*, 150.

Panama.

"Our Socialistic State of Panama."—17 *Case and Comment*, 226.

Philippines.

"A Decade of Juridical Fusion in the Philippines."—17 *Case and Comment*, 215.

Porto Rico.

"Americanizing an Old System of Law."—17 *Case and Comment*, 218.

Practice.

"Principles of Practice Reform."—71 *Central Law Journal*, 221.

Real Property.

"Effect on Real Estate Values of the San Francisco Fire."—25 *Political Science Quarterly*, 458.

Receiving Stolen Property.

"'Found in the Possession of Such Person'—I."—74 *Justice of the Peace*, 457.

Records.

"Registration of Title—Report of Scottish Commission."—45 *Law Journal*, 556.

Socialism.

"Marxism versus Socialism. V."—25 *Political Science Quarterly*, 393.

Sociology.

"Recent Advances in Sociology."—25 *Political Science Quarterly*, 500.

Subrogation.

"Subrogation of the Surety, in Virginia."—16 *Virginia Law Register*, 321.

Taxes.

"The 'Crown and Shuttle' Case." (Effect of Increase of License on Assessment of Licensed Premises.—74 *Justice of the Peace*, 445.

Telegraphs.

"Aviation and Wireless Telegraphy as Respects the Maxims and Principles of the Common Law."—42 *Chicago Legal News*, 31.

Trial.

"Arguments from Testimony."—17 *Case and Comment*, 223.

"Directing Verdicts."—16 *Virginia Law Register*, 401.

Uniform Legislation.

"Reciprocal Legislation."—25 *Political Science Quarterly*, 435.



Quaint and Curious

Odd legal incidents gleaned from modern chronicles.



Law and Hocus-Pocus.—Six suspected pickpockets, after being fined in the Covington police court and ordered to leave town, are said, according to the Cincinnati Times-Star, to have turned to their attorney and asked: "How much do we owe you?" "Fifty dollars," was the answer.

"Cheap at half the price," said the social Dick Turpins.

Then they handed the barrister the fifty. In the strenuousness of their gratitude they closed in around him and shook his hand. They do the same things occasionally on the back of crowded street cars. Only on such occasions the practice is facetiously referred to as "the wedge game."

The attorney was surprised at the extent of the men's gratitude. Afterwards he fell to thinking it over. Mechanically he felt in his pocket for the fifty. It was gone. The pickpockets had stolen their own fee from the lawyer who defended them.

An ancient playwright, Charles Macklin, wrote in "Love a la Mode," "The law is a sort of hocus-pocus science, that smiles in yer face while it picks your pocket; and the glorious uncertainty of it is of mair use to the profession than the justice of it." Probably the light fingered gentry were not familiar with this quotation, but anyway "they smiled into his face as they did it." He felt their grasp of gratitude and innocently took it for its face value, while the pickpockets laughed within themselves at the "hocus-pocus" game they were working upon a limb of the law.

Not Interested.—An amusing incident happened the other day in a justice's court at Bellingham, Washington, presided over by Henry C. Beach, Esq., in the trial (before a jury) of the case of the State of Washington v. —, for selling intoxicating liquor to an adjudged habitual drunkard. Among the spectators was a Scotchman, somewhat under

the influence of liquor, who was apparently very much interested in the proceedings. The evidence was all in; the defendant's attorney had presented his case and the prosecuting attorney was making the final argument. After he had stated the status of an adjudged habitual drunkard, described the depths to which a man might be dragged by the use of intoxicants, and pictured in a vivid way the horrors of the life of a toper, the Scotchman, arising in the back part of the room and raising his hand to his forehead in a salute to the court, said, "Your Lordship, may I be excused? I do not find anything here to interest me."

Letters of Marque and Reprisal.—An Iowa attorney recently received a card from a client, complaining that a debtor who owed him a balance on the purchase price of a horse "never shoes up or never rote me or aneything," and ending with the war-like injunction "now you go after him and get sometin of it is oneley his hide."

A Mail Order Defense.—Recently the good government league of a county in Missouri employed a Chicago detective to go there and unearth some gambling dens and blind tigers. The result was that a number of men were indicted. When the case of one of them was called, no one answered for the defendant, and the judge had him brought into court. He was informed of the nature of the charge and asked if he was ready for trial. He saw the Chicago detective sitting there ready to testify, and, turning to the court, said, with much seriousness: "Judge, I can't go to trial now."

"Why not?" queried his Honor.

The defendant hesitated for a moment and then remarked, with a twinkle in his eye: "I have sent to Sears & Roebuck, of Chicago, for a good lawyer and a full set of witnesses, and not one of them has come yet."

"Get ready for trial to-morrow," observed the court, with a smile.

Was it Battery or Larceny?—A San Francisco woman swore to a warrant for the arrest of her next door neighbor on a charge of battery, and produced a handful of hair as exhibit A. She said that he annoyed her by ringing her door bell when he was laboring under a "jag." When she opened the door and remonstrated with him, he grabbed her by the hair of her head and tore out a handful.

"An important point is involved in this case," said the judge. "If the hair is your own, then battery is the proper charge; but if it is store hair, then the charge should be petty larceny.

Humane Treatment of Books.—A western lawyer seeks to obtain considerate use of his library by stamping upon the volumes the following directions:

"DELLE'S BOOK. Do not remove it from his office. When using it, do not go to bed in it, break the binding, or soil or besmear with ink, but hold up the covers, and handle with care."

Waltzed with a Skeleton.—A sailor became so imbued with the carnival spirit, says the San Francisco Call, that while passing a drug store he broke a window, and, reaching in his hand, seized a skeleton that was on exhibition there. He waltzed along the street with the skeleton in his arms, and, in his highly exhilarated state, stepped on one of its legs, breaking it. A crowd enjoyed the performance, which continued until a policeman approached and arrested the culprit for malicious mischief. He told Police Judge Conlan that it would not have happened if he had been sober, but the judge said that was no excuse and sent him to the county jail for three months.

Freak Taxes.—Henry VIII. taxed beards, and graduated the tax according to the status of the wearer. For example, the sheriff of Canterbury was constrained to pay the sum of three shillings and fourpence for the privilege of sporting his venerable whiskers. Elizabeth likewise fixed a similar tax on every beard of over a fortnight's growth. Elizabeth was also bent on making the country of a religious turn of mind, and all who stayed away from church on

Sunday rendered themselves liable to a fine. In 1695 it was decided that the arrival of every child into the world should be greeted by a tax. The birth of a child to a duke cost the proud but harassed father thirty pounds, while the advent of a commoner's child into the world was hailed with a tax of two shillings. Moreover, it was an expensive matter to die, and bachelors and widowers also were compelled to pay for the privilege of single blessedness. With the advent of more constitutional days freak taxation did not cease. It was due to William Pitt that the window tax was instituted. In the reign of George I. it was necessary to have a license in order to sell hats. Then there was the tax on hair powder and the tax on watches and clocks. In the reign of George III. a duty of two shillings and sixpence was imposed on bricks. At a later period in the same reign bricks were divided, for the purposes of taxation, into common and dressed bricks, and the duty on each kind of brick was regulated according to its size.—T. P.'s Weekly.

England's Old Coal Law.—When coal was first used in England the prejudice against it was so strong that the House of Commons petitioned the King to prohibit the use of the "noxious" fuel. A royal proclamation having failed to abate the nuisance, a commission was issued to ascertain who burned coal within the city of London and its neighborhood, to punish them by force for the first offense, and by the demolition of their furnaces if they persisted in transgressing. A law was finally passed making it a capital offense to burn coal in the city, and only permitting it to be used by forges in the vicinity. It is stated that among the records in the Tower of London a document was found, according to which a man was hanged in the time of Edward I. for no other crime than having been caught burning coal.

Manx Laws.—Manx laws, as Mr. Hall Caine has pointed out in the London Chronicle, are far more favorable to women than our own. Every woman, widow or spinster, in the Isle of Man, whether she be owner, occupier, or even

lodger, enjoys the franchise for the house of keys election. A law respecting women, which is probably unique, was repealed early in the last century, after being in force 240 years. "If a man take a woman against her will, if she be a wife, he must suffer death; if she be a maid, the deemster shall give her a rope, a sword, and a ring; and she shall have her choice,—either to hang him with the rope, cut off his head with the sword, or marry him with the ring." Popular tradition relates that one woman who insisted on hanging her aggressor repented after he had been suspended some time, cut him down and offered him the ring. He took it, but, remarking that one punishment was enough, refused to marry her.

New Use for Lawyers.—"The United States government is now credited," says the Emporia Gazette, "with having the finest detective service in the world. The organization was perfected by the Department of Justice, and Attorney General Wickersham deserves a bouquet for the idea.

"This organization has been in commission only a short time, but it has accomplished remarkable things, and is just getting warmed up to its work. The arrest of the sugar grafters, the suppression of the bucket shops, and half a dozen other more or less sensational achievements are due to the detective force.

"The head of the force is a graduate of Yale, a man of high ability. Before taking his present job he was a successful lawyer. The idea of high grade detective work of an original kind appealed to him, and he abandoned the law to take charge of this government bureau. He selects his own assistants, and usually chooses lawyers of an adventurous turn. Their legal training is considered necessary in order that they may always work within the law.

"Thus the evidence that they accumulate against a man or corporation is pretty sure to hold good in court, where the evidence gathered by an ordinary detective is apt to spoil a case.

"This admirable bureau has been so successful in its brief existence that it

has attracted the admiration of Scotland Yard and other great foreign secret service bureaus, and its methods are already being imitated and adopted bodily. This means that the old-fashioned human sleuth is doomed. Sherlock Holmes, who gets down on his knees with a magnifying glass to examine the ashes of a cigar, looks like a rube beside the new educated detective, who shuns everything spectacular, and attracts as little attention as possible.

"There will be a new kind of detective fiction in a year or two, when the hack novelists get wise to this government innovation. Instead of Old Sleuth and Nick Carter, with their false whiskers and green spectacles, we'll have ex-judges of the supreme court on the trail of second-story men."

Whereas.—The following notices published in the Lyndonville Union-Journal speak for themselves:

NOTICE.

Whereas my wife, Vera Belle Miller, has left my bed and board without just cause or provocation, I hereby forbid all persons harboring or trusting her on my account, as I shall pay no bills of her contracting after this date.

RUFUS MILLER.

LYNDONVILLE, Vt., September 10, 1910.

NOTICE.

Whereas my husband, Rufus Miller, has refused to support me I am supporting myself and paying my own bills.

VERA B. MILLER.

LYNDONVILLE, Vt., September 24, 1910.

Hard on Missouri.—In the case of Roberts v. Railway Company, decided by the supreme court of California, September 1, 1910, the court, commenting upon an attempt of the appellant to take advantage of a certain technical defect in the complaint, presented for the first time upon the appeal, quoted from Thompson on Negligence, vol. 6, § 7473, stating the rule in such cases and saying: "Such a procedure works fraud upon the opposite party, and there is no authority for it outside of Missouri."



Judges and Lawyers

Personal Items Concerning Bench and Bar.



Hon. Jared Y. Sanders Louisiana's Chief Executive

Upon the death of Senator McEnery, which occurred a few days after the adjournment of Congress last June, the Louisiana legislature, which was then in session, chose Governor Jared Y. Sanders to fill the vacancy. This selection was a highly popular one, except for the fact that many believed that, should the governor accept the United States senatorship, which would necessarily take him away from the state and separate him from intimate connection with the Panama Canal Exposition enterprise, which will mean so much to Louisiana and the South, a great loss to this magnificent undertaking would be incurred.

Governor Sanders was urged to give up the senatorship, which was within the grasp, and remain as governor of Louisiana until the exposition enterprise should be assured by the votes of the people and by an act of Congress.

The governor listened to the appeal made to him, and he replied to it by acceding to its urgent request without the slightest hesitation or delay. With what must be considered an extraordinary pub-

lic honor waiting the disposal of a young man who has set out to gain distinction in a great public career, it required unusual courage and remarkable devotion to what was represented to him as a public duty, to induce him to sacrifice what

may be considered the crown of a public political career in this country.

Governor Sanders appointed Judge J. R. Thornton, of Alexandria, Rapides Parish, to be a Senator in the place which he himself had declined. The judge was a Confederate veteran, he served on the judicial bench of Louisiana, and has been a lawyer in active practice. He is a citizen of the highest character and in every way worthy. He is an *ad interim* appointee, and will serve until the next meeting of the state legislature. If he should do nothing

more in his brief service than duplicate the career of Colonel Gordon, the recent *ad interim* Senator from Mississippi, he will deserve praise.

The governor gives notice that he will hereafter appeal to the people of the state for their support in a primary election in which he will offer himself as



HON. JARED Y. SANDERS

a candidate for the senatorial toga, which he declined at the call of his fellow citizens, who needed his great services in his present position, and this announcement only emphasizes the greatness of the sacrifice he made that he might render a great and patriotic service.

Governor Sanders was born in the parish of St. Mary, Louisiana, on January 29th, 1869. He graduated from Tulane University in 1889. He was elected a member of the Louisiana house of representatives in 1892; re-elected in 1896, and chosen speaker of the house in 1900. In 1904 he became lieutenant governor, and was elected governor in 1908. He was formerly a member of the prominent New Orleans law firm of Foster, Sanders, Milling, & Godchaux.

Solicitor General Lloyd W. Bowers died suddenly in Boston. A graduate of Yale in 1879 and of the Columbia Law School in 1882, general counsel of the Chicago & Northwestern Railroad in 1893, and Solicitor General of the United States in charge of the government's business before the highest judicial tribunal of the country, at fifty years of age, Lloyd W. Bowers, descendant of hardy English-Irish stock, climbed rapidly in the field of law. He was born at Springfield, Massachusetts, March 9, 1859. The Bowers were prominent in Massachusetts and included many clergymen and teachers.

Mr. Bowers was admitted to the bar in June, 1882, and immediately took a desk in the offices of Chamberlain, Carter & Hornblower, in New York city. He soon won a junior partnership with former Chief Justice Wilson, of Minnesota. In Minnesota he had a general practice, and later moved to Chicago, where, in June, 1893, he became head of the legal department of the Chicago & Northwestern Railroad.

He was appointed Solicitor General shortly after President Taft's inauguration.

After he became Solicitor General Mr. Bowers was much in the public eye, having figured prominently in the tobacco, oil, and other big trust cases.

During his term as Solicitor General

no case which he argued was decided against him. One decision regarding grazing on forest reserves went against him by an equally divided court, but later the case was set for a rehearing.

It is related that in 1879, when President Taft and Mr. Bowers were in Yale together, Mr. Bowers was initiated into the Skull and Crossbones Society. President Taft, then a senior, officiated at the ceremony. When the initiated was asked what his greatest ambition was, he replied:

"I want to be a justice of the United States Supreme Court."

"All right," said Student Taft, "when I am President of the United States I'll make you a justice."

Mr. Bowers has figured conspicuously in the gossip about the succession to one of the vacancies in the Supreme Court of the United States, and has even been seriously discussed, with Governor Hughes, of New York, in connection with the chief justiceship. President Taft has made no secret of his intention to appoint Mr. Bowers to the court upon a favorable opportunity in the near future, and is known to have regarded the Solicitor General as one of the ablest lawyers in this country. He received national attention last March when alone he defended the constitutionality of the corporation tax provisions of the Payne-Aldrich tariff act before the Supreme Court. Arrayed against him was a corps of the leading lawyers of the country, and the success of the Solicitor General in presenting his case stamped him, so his friends assert, as certain of appointment to the Supreme Court.

John L. Peak died recently at his home in Kansas City, Missouri. He was a graduate of Georgetown University and the Louisville Law School, and practised his profession in Georgetown from 1862 until 1868, when he came to Kansas City. From 1895 to 1897 Mr. Peak was United States minister to Switzerland. He received his appointment from President Cleveland. He had practised law in Kansas City since his retirement from the diplomatic service.

South Dakota's Attorney General



HON. S. WESLEY CLARK

Honorable S. Wesley Clark, Attorney General of South Dakota, was born December 28th, 1872, at Platteville, Grant county, Wisconsin, of English parentage.

He came with his parents to Dakota territory in July, 1882, and worked on his father's farm until 1890. In that year he entered Redfield college, graduating in 1894. He studied law in the office of Dean Thomas Sterling, of the Vermillion Law School, then a practising attorney at Redfield, South Dakota, and attributes whatever success he may have had to the personal friendly interest of Dean Sterling. Mr. Clark was admitted to the bar in 1897. He practised first at Doland, South Dakota, as a member of the firm of Korns & Clark, and was elected state's attorney of Spink county, South Dakota, in 1890. Upon Mr. Sterling's appointment as dean of the Law School in 1890, Mr. Clark took up his practice at Redfield, under the firm name of Sterling & Clark. He was re-elected as state's attorney in 1902. Mr. Clark was nominated by his party as candidate for Attorney General by acclamation, at the state convention, and elected in November, 1906, and his administration of the office was so efficient that he was re-elected in 1908 by the largest majority of any candidate on his ticket. Attorney General Clark is a Republican in politics. He takes a deep interest in all questions affecting the public welfare, and has been active in the newly organized National Association of Attorneys General. His paper read before the Association of Attorneys General at Buffalo in 1909, on "The Police Power of the States," attracted favorable comment.

North Dakota's Attorney General

Honorable Andrew Miller, Attorney General of North Dakota, was born in Denmark, November 16, 1870. He emigrated with his parents to the United States in 1872. His early boyhood was spent in the



HON. ANDREW MILLER

states of New York and Vermont. In 1880 he moved to Chickasaw county, Iowa, with his parents, and until 1892 followed the occupation of farming. In the spring of that year he began the study of law in the office of A. C. Ripley, at Garner, Hancock county, Iowa; and was admitted to the bar at Des Moines, Iowa. In May, 1894, he opened an office for general practice at Buffalo Center, Winnebago county, Iowa. In the fall of 1896 he was elected county attorney and in January, 1897, removed to Forest City, the county seat of Winnebago county. Mr. Miller was elected mayor of Forest City in 1898 and re-elected in 1900, serving two consecutive terms and one term as county attorney.

In 1905 he moved to Bismarck, North Dakota, opening a law office at that place. He was appointed Assistant Attorney General in January, 1907, under Hon. T. F. McCue, then Attorney General; but resigned in November, 1907. In November, 1908, he was elected Attorney General and has served the state with ability and fidelity. Attorney General Miller is a member of the firm of Miller & Costello, of Bismarck.

Theodore Sullivan, circuit judge, and one of the most prominent jurists in Ohio, died recently at Troy, in that state. Admitted to the bar in Montgomery county in 1864, he practised for a short time in Dayton and then removed to Troy, where he soon became prominent

in public life. In 1891 he was chosen judge of the common pleas court. In 1899 he was elected circuit judge and has served with distinction since that time.

William L. Vandeventer, one of the most prominent attorneys of Quincy, Illinois, died recently in that city. He studied law in the office of Lysander E. Wheat, and was admitted to the bar in 1859 at the age of twenty-three. Before he had practised ten years he was recognized as one of the ablest men in the surrounding country, and his advice was sought on all matters of public interest. In 1870 he was chosen as a delegate to the Illinois Constitutional Convention, and the records of that body show that he participated in several of the great debates. On the strength of his record in the convention he was sent to the state assembly, where he served two terms with credit to himself and to his constituents.

Mr. Vandeventer was always a great student. When a young man he learned to read and write Spanish and French without the aid of an instructor. It is said of him that he was one of the few attorneys who have read the whole of the Illinois Court Reports.

He feared no opponent, and always seemed to enjoy meeting one who could give him a close battle. Effective in delivery and sound in logic, some of his pleas are marvels in argument and rhetorical construction.

Benjamin L. Hoyt, of Penn Yan, New York, died recently at the advanced age of ninety-two years. For nearly fifty years Mr. Hoyt had occupied the same room as his law office. There he practised his profession, scarcely missing a day except Sundays.

It is believed that Mr. Hoyt was the oldest practising attorney in the United States. It was nearly seventy years ago that he was admitted to the bar, and he practised his profession up to within less than three months before he died.

The death of Judge William M. Hart, of the Davidson county criminal court, removes a prominent figure from the public service of Tennessee. Judge Hart was a man of strong common sense and

vigorous intellect, and exceedingly popular in Nashville and Davidson county. He presided at the trial of the Coopers, father and son, charged with the murder of ex-Senator Carmack.

Judge Samuel A. Merritt died recently at Salt Lake City. Judge Merritt was formerly of Virginia, and graduated in law from the Washington and Lee University. He was prominent in California from 1849; was representative in Congress from Idaho; and later was appointed by President Cleveland a member of the supreme court of Utah.

About Our Contributors

Henry C. Spurr, author of the interesting article on the influence of Sir William Blackstone on the rule in Shelley's Case, which appears in this number, has been nominated for member of the New York state assembly for the second district of Monroe county, by the Democratic party. Mr. Spurr was formerly assistant district attorney of Monroe county, and is known as a journalist of ability. He is at present employed on the editorial staff of the Lawyers Co-operative Publishing Company. A new article on "Testamentary Capacity," written by Mr. Spurr, will soon appear in CASE AND COMMENT.

Mr. Alexander Otis, of the Rochester New York bar, an article by whom, upon "The Stage Lawyer" appears in this number, has practised his profession in Rochester for the past ten years. He is a graduate of the Cornell Law School and was at one time secretary of the local civil service commission. Mr. Otis heretofore published a successful novel entitled "Hearts Are Trumps," and the publishing house of Little, Brown, & Company have just brought out another book by him entitled "The Man and the Dragon," based upon the successful fight made by a plucky young editor in a street railway franchise controversy against the "dragon" of bossism and municipal misrule. The book vividly portrays political conditions, such as exist in many of our cities, and its interest is enhanced by a charming love story, which forms part of the plot.



The Humorous Side

Life without laughing is a dreary blank.—Thackeray.



Literal Interpretation of Blackstone.—"Speaking of corporations," said a commissioner in attendance at the American Bar Association meeting, "reminds me of an incident that occurred back in Philadelphia. A body of young law students were attempting to delve into the mysteries of Blackstone. They had progressed as far as the chapter of Blackstone on Corporations beginning, 'We will now treat.' Some of the budding legal genius expressed a desire to do so, with the result that they got no further that day in their legal studies."

Too Smart to Be a Lawyer.—B. Davis Noxon was one of the ablest lawyers in central New York. A young man entered his office as a student and was given Blackstone to study. At the end of a month he asked Mr. Noxon what he should read next. "Do you understand Blackstone?" "Yes," was his answer. "Read Kent," was the order. In another month he announced that he had finished Kent, and "What next?" "Have you read Blackstone and Kent?" "Yes." "Do you understand them?" "Yes." "Well," said Mr. Noxon, "you had better go at some other business, you are too smart to be a lawyer."

Warning to Young Lawyers.—Judge Clark A. Smith told a good story to several new-fledged lawyers who were visiting with him, and the youngsters enjoyed it thoroughly.

In the old days, when oral examinations were still the thing, an examining board was pommeling an applicant with questions from Blackstone, Kent, and other legal lights.

"I didn't study anything about these fellows," complained the applicant.

"What did you study?" asked one of the judges.

"I studied the statutes of the state," he replied. "I studied them hard. Ask me a question about them, and I'll show

you. That is where I got my legal knowledge."

"My young friend," said one austere judge on the examining board, "you had better be very careful, for some day the legislature might meet and repeal everything you know."—Kansas City Journal.

Unexpectedly Drunk.—When a prominent lawyer left his home at noon, his wife informed him she was to give a 5 o'clock tea, and exacted a promise that he would assist in receiving the guests. The lawyer went to his club, where he drank numerous Scotch highballs. Suddenly he thought of the 5 o'clock tea. It was then 5:15, and an excuse came to him like an inspiration. Scrawling the following note he sent it by messenger:

"Dear Fannie: I am sorry to disappoint you, but I have been taken unexpectedly drunk."

The Patriot's Burden.—A Washington lawyer recently made an impromptu speech, in which he used the following metaphor:

"It seems to me that those who hold the bulwark of liberty in their hands ought at this time to come to the front."

The Status of the Jury.—"A word to the wise is sufficient," quoted the Wise Guy. "I suppose that is why a lawyer will talk to the jury for half a day," added the Simple Mug.—Philadelphia Record.

Confusing the Court.—Senator William Alden Smith relates this story of an Irish justice of the peace out in Michigan, says Washingtonia. In a trial the evidence was all in and the plaintiff's attorney had made a long and very eloquent argument, when the lawyer acting for the defense arose.

"What you doing?" asked the justice as the lawyer began.

"Going to present our side of the case."

"I don't want to hear both sides argued. It has a tendency to confuse the court."

Vain Display.—While one thing essential to a cultured lawyer is a thorough knowledge of Latin, it is not necessary, said Hon. James P. Root, that he should parade his classical knowledge, for he might be "taken down a peg," as was the young lawyer who displayed his learning before an Arkansas jury. His opponent replied: "Gentlemen of the jury, the young lawyer who just addressed you has roamed with Romulus, canted with Cantharides, ripped with Euripides, socked with Socrates, but what does he know about the laws of Arkansas?"

According to Parliamentary Law.—Judge James R. Caton, of Virginia, relates an incident that happened "down on the East Shore." He said there was a new and inexperienced justice of the peace whose first case was a man to be prosecuted for stealing a yearling calf. The case was set by the justice for 8 o'clock one Monday morning. He opened court with great dignity. The only persons involved that were present were the sheriff, defendant, and his attorney. The prosecuting attorney failed to put in an appearance. The justice called the case; thereupon the attorney for the defendant moved to dismiss because the prosecution was not ready. This put the justice in a quandary. Finally he said: "Do I hear a second to the motion?" The lawyer punched his client, who, being thus tipped off, said: "I second the motion."

"It has been moved and seconded," said the justice with rare dignity, "that the case be dismissed. All in favor of this motion say aye." The prisoner and counsel voted for the affirmative. The sheriff cast the minority vote for the negative.

"This motion is carried, and the culprit air dismissed," said the justice.

The Dog "Strade."—The following is a literal copy of a petition filed by an attorney in a Kentucky court:

the plaintiff States that the Illinois Central Railroad Co is a carparation by the laws of the State of Kentucky au-therise to sue and be Suied by its car-prate name I. C. R. R. Co. he futher

says that said company has a road on which its runs cars from Louisville ky to Paducah ky through ———County ky and on said road his dog strade up on Said road on the 21 day of November 1903 throug the negligen orcerliness of said company or its servant or imployes surprice or permitid it engin or cars to run over and kill said dog to his damage to the amount of forty five dollars for which he Prays Judgment a gainst the Deft I. C. R. R. Co for \$45 dollars and his costs and all nisissary and proper relief.

Atty for Plff

Wanted Justice.—The following affidavit was filed with a Louisiana justice of the peace by a colored woman desirous of invoking the aid of the law:

"One M——C——Col. disposes and says that one J——L——Col. did wilfully and without cause slanders me in a mostest abuses ways, calling me 'pts' names saying I was a beastes, cow, ninies coward's and says I was a means negis, and fraids if he is my Brothers he is tyes to injus me caracters, and tries to gets troumles betwens mes and my husbands, and I does payes for de courts may it pleases, yous hones, to 'big' 'pros' this cases, ans hopes you cans gibes mes jusses, an,s rememe,s ize is a hards wok-en woman,s anz need,s the law,s,"

A Narrow Escape.—A negro was arraigned before Police Justice Mullowny on a charge of stealing sweet corn from the plant disease section of the department of agriculture's experimental farm.

After glancing over the diagnosis of the ailments afflicting this particular field of corn, the justice turned to the negro and said:

"Don't you know that corn was full of saprophytes, phycomycetes, mucorales, perisporiales, and erysephaceae?"

"O, ma Lawd, Jedge, don' say dat," gasped the negro. "Ah knowed Ise feelin' mighty bad—sick in de haid an' laigs."

"Go down for thirty days," said the judge, "and when you get out give the saprophytes a wide berth."—Washington Special.

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References: Union Bank and Trust Co.; The Western Investment Co., Phoenix, Ariz.

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In
New York



When Boss Meets Boss

By Berryman in
Washington Star.

Coming Battles on Land and Sea

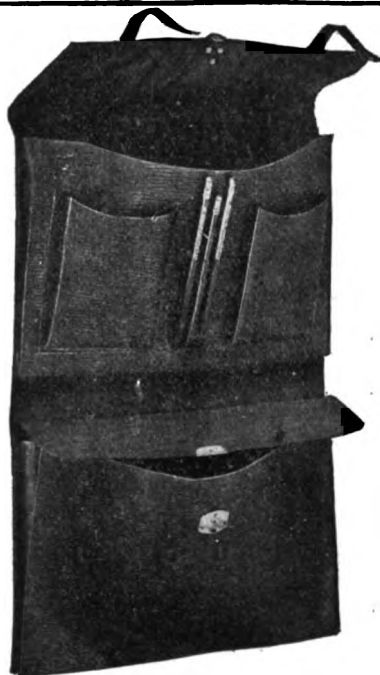
BY THE CARTOONISTS

In New Jersey



What are the wild waves saying?

By De Mair in the
Philadelphia Record.



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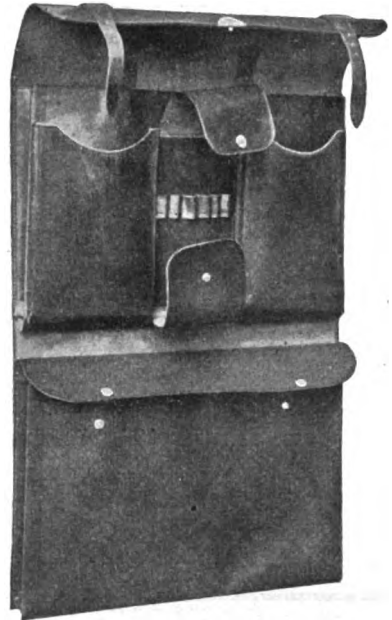
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CASE AND COMMENT

THE LAWYER'S MAGAZINE



Dec.

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Shakespeare's Will

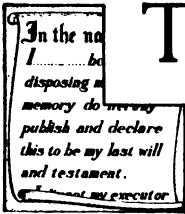
Shakespeare commences his will as follows: "In the name of God, Amen. I, William Shakespeare, of Stratford-on-Avon, in the county of Warwick, gent., in perfect health and memory (God be praised!) do make and ordain this my last will and testament in manner and form following; that is to say: First, I commend my soul into the hands of God, my creator, hoping, and assuredly believing, through the only merits of Jesus Christ my Saviour, to be made partaker of life everlasting; and my body to the earth whereof it is made. Item, I give and bequeath unto my daughter Judith, £150, to be paid to her in manner following: £100 in discharge of her marriage portion, and £50 upon her surrendering all her right in one copyhold tenement in Stratford-on-Avon unto my daughter Susanna Hall and her heirs forever. Item, I give to my daughter Judith £150 more if she or any issue of her body be living at the end of three years next ensuing the date of this my will... Item, I give and bequeath unto the poor of Stratford, £10.... Item, I give and bequeath to Hamlett Sadler 26s. 8d. to buy him a ring; to William Reynolds, gent., 26s. 8d. to buy him a ring; to my godson William Walker, 20s. in gold; to Anthony Nash, gent., 26s. 8d., and to Mr. John Nash 26s. 8d., and to my fellows John Hemynge, Richard Barbage, and Henry Candell, 26s. 8d. to buy them rings... Item, I give unto my wife my second best bed with the furniture. . . . All the rest of my goods... I give to my son-in-law John Halls, gent. and my daughter Susanna his wife, whom I make executors, . . . And I do entreat and appoint Thomas Russell, Esq., and Francis Collins, gent., to be overseers hereof. . . ."



Law Governing Construction of Devise of Real Property

BY GEORGE H. PARMELE

Author of *Parmele's Wharton on Conflict of Laws*.



THE tendency of the courts, especially noticeable in cases dealing with conflict of laws, to create misleading precedents by misstating or overstating the principles applicable to the subject, even when the decisions themselves are right upon the facts, is illustrated by the recent case of *Peet v. Peet*, 229 Ill. 341, 82 N. E. 376, 11 A. & E. Ann. Cas. 492, 13 L.R.A. (N.S.) 780. The court there declares in general terms that the construction of a devise of real property, in the sense of ascertaining the testator's intention, is governed by the *lex rei sitæ*, and not by the *lex domicilii*, in case of a conflict between the two. The court, however, concedes that if by the domiciliary law the words employed in the devise have a meaning different from that which they bear in the state in which the subject of the devise is situated, that law may be proven, not to establish a rule of law binding on the court charged with the proper interpretation of the will, but simply as a fact or circumstance to enable the court to arrive at a correct conclusion under the law of the forum. The court seems to be more fortunate in its concession than in its statement of the general principle. The purpose for which, it is thus conceded, the domiciliary law may be proven is, from the nature of the question, the only purpose for which any extrinsic law, whether the *lex rei sitæ* or *lex domicilii*, may be legitimately invoked when the question in-

volved relates to the intention of the testator, that is, his actual intention.

Since, therefore, the concession covers the entire field so far as construction in this sense is concerned, it seems to be irreconcilable with the general proposition that construction—which the court expressly declared to be equivalent to ascertaining the intention of the testator,—is governed by the *lex rei sitæ*; and can hardly be treated as an exception to that proposition. The term "construction" broadly used may embrace the effect of the devise, as well as the intention of the testator in respect thereto; and had the general proposition of the court been limited to that phase of construction it would have been beyond criticism; but as already indicated by the court's own definition it is construction in the sense of ascertaining the testator's intention, which is by that statement referred to the *lex rei sitæ*.

The necessity of invoking any extrinsic law in order to ascertain the intention of the testator, and therefore the necessity of choosing between the *lex rei sitæ* and *lex domicilii* in case of a conflict, arises only when the language of the will is susceptible of different interpretations or falls short of expressing the full, complete, and specific intention of the testator. In that situation the extrinsic law, regarded as one of the facts or circumstances surrounding the testator, may serve to remove the ambiguity arising from the language of the will or to complete and render specific the intention partially or generally expressed therein. This is obviously the only bear-

ing that the extrinsic law can properly have on the case so long as the effort is to ascertain the intention ambiguously or partially expressed in the will. In this connection the extrinsic law, whether *lex domicilii* or *lex rei sitæ*, does not perform its ordinary and legitimate function of prescribing a rule operating *ex proprio vigore* to determine the respective rights of the parties. At this point, however, a distinction is to be observed between invoking an extrinsic law in order to ascertain the actual intention of a testator, and invoking such a law as a rule of property to be applied irrespective of the actual intention. The distinction is apt to be obscured by the fact that rules which are in reality rules of property applicable irrespective of the testator's actual intention, are sometimes treated as though they rested on the presumed intention of the testator or operated to ascribe a particular intention to him. Whether or not this is a correct view of the foundation and operation of such a rule, it is obvious that, the presumption on which the rule rests and the intention which it ascribes to the testator being conclusive, the inquiry stops as soon as the conditions on which the rule operates appear, and there is then no question of ascertaining the testator's actual intention. The distinction may be illustrated by comparing the operation of the rule in Shelley's Case (assuming that in the particular jurisdiction that rule is regarded as a rule of property, and not as a rule of construction), and the effect of the statute of descent upon a devise to one and his "heirs." In the first case, upon the assumption that the rule is a rule of property, it operates *ex proprio vigore* as soon as the conditions of its application appear, irrespective of any intention disclosed by the will itself. In the second case, however, the statute of descent does not operate *ex proprio vigore*, as it would in case of intestacy, but is merely a fact or circumstance—the significance and weight of which vary with the language of the will as a whole and with the other facts and circumstances surrounding the testator—bearing on the question whom the testator intended to designate by the term "heirs." Doubtless, when the will, regarding all

parts thereof and viewing it in the light of all the surrounding facts and circumstances, is destitute of all other indications of the testator's intention in this regard, the proper statute of descent will prevail, and in this situation it approximates, in practical effect, closely to a rule of property, or, in other words, to a rule which conclusively ascribes a particular intention to the testator irrespective of his actual intention. Nevertheless, even in this situation the statute prevails not because it operates as a rule of property, but because it happens that there is nothing to overcome its significance as a fact or circumstance illustrating the testator's intention.

It is clear that, so far as rules of property are concerned, a devise of real property is governed by the *lex rei sitæ*, and not by the *lex domicilii*. It is, however, by no means so clear that the *lex rei sitæ* will prevail over the *lex domicilii* so far as the question of construction, in the sense of ascertaining the intention of the testator, is concerned. In the first place it is apparent from the nature of the question that no hard-and-fast rule can be applied to it, since the will as a whole viewed in the light of the surrounding facts and circumstances, even when it does not directly express the testator's full intention, may point to the probability that he had the law of a particular state in mind. The fact, for instance, that he was familiar with the statute of descent of the state in which the land is situated may bear somewhat in favor of the *lex rei sitæ*, and, on the contrary, the fact that he was familiar with the statute of descent of his domicil and unfamiliar with that of the other state, may bear somewhat in favor of the *lex domicilii*. And there are many other possible facts and circumstances that may be entitled to consideration. The question, therefore, like any other question bearing on the intention of the testator, depends very largely upon the facts of the particular case.

When, however, the case is destitute of all other indications of the testator's intention as to the governing law, it seems more in accord with the probabilities to assume that he had in mind the law of his domicil, with which he was

presumably familiar, than that he was speaking with reference to the law of a foreign state or country with which he had no relation except that the subject of the devise was situated there. As a matter of fact, when the specific question as to the law to be invoked where the devise is to one and his "heirs" has been presented, the courts, in the absence of indications of a contrary intention, have adopted the *lex domicilii*, rather than the *lex rei sitæ*, for the purpose of determining the particular devisees included under that term.¹

And the Mississippi supreme court ² in a recent case has declared in general terms that, notwithstanding the well-settled rule that the title of real estate is governed solely by the law of the place where the property is situated, yet, when the inquiry is directed solely to the ascertainment of the meaning and intention of the testator from the language employed by him in the will, the *lex domicilii* controls. One argument advanced by text writers in support of this view is that a contrary rule might operate to impute to the testator a different intention with respect to each of several parcels of real property covered by the same devise, if the parcels were located in different states. Doubtless many cases may be found in which the general principle that wills of real property are governed by the *lex rei sitæ* is stated in terms broad enough to cover the question of construction, in the sense of ascertaining the testator's intention. In most of these cases, however, the question involved was either as to the formal or essential validity of the will, or its effect, as distinguished from its construction in the sense of ascertaining the testator's intention. This, indeed, appears to be true of the Peet Case. The question there involved was whether a devise by a testator domiciled in New York, of real property in Illinois, was governed by the Illinois statute, which in effect declares that in case a child for whom no provision is made, is born to the testator after the execution of the will, the devisees and

legacies shall abate to raise the portion to which the child would have been entitled had the testator died intestate, unless it appears by the will that it was the testator's intention to disinherit such child. The New York statute proved in the case was to the same effect except that, in terms at least, it contained no exception in case of the manifestation of an intention in the will to disinherit the child. It was apparently assumed in this case that if the New York statute were to be applied it would preclude any inquiry as to the testator's intention. While, as already indicated, the court regarded the question involved as one of construction of the will in the sense of ascertaining the testator's intention, it is not apparent how either statute is capable of throwing any light on the testator's intention. That intention must be, and in fact was, determined from the will itself viewed in the light of the facts and circumstances surrounding the testator. To have applied the New York statute, upon the assumption that it precluded any inquiry as to the testator's intention, would have been to apply not a rule of construction, but a rule of property, prevailing at the domicile, or what amounts to practically the same thing, a rule conclusively ascribing to the testator an intention not to disinherit the afterborn child. Upon the other hand, in applying the Illinois statute to the situation, the court merely applied a rule of property of the *lex rei sitæ*, not indeed a rule of property conclusively ascribing a particular intention to the testator, but a rule of property which throws open the question of the testator's actual intention.

If this view of the question actually before the court is right, the general statement of the court referring the question of construction, in the sense of ascertaining the intention of the testator, to the *lex rei sitæ*, was uncalled for, inconsistent with its concession previously referred to, and the result of the failure to distinguish between the construction of the devise, in this sense, and its effect under rules of property. The concession, if read in connection with the general proposition, serves as an antidote, and will probably prevent a misapprehension of the effect of the case as

¹ See *Guerard v. Guerard*, 73 Ga. 506; *Keith v. Eaton*, 58 Kan. 732, 51 Pac. 271.

² *Ball v. Phelan*, 94 Miss. 293, 49 So. 956, 23 L.R.A.(N.S.) 895.

a precedent. The general proposition, however, read without the concession, is calculated to create a false impression, and apparently align the case in support of a principle broader than the court intended to assert.

Since any general principle, whether it calls for the *lex rei sitæ* or *lex domicilii*, which may be adopted for the guidance of the courts in choosing which of the conflicting laws is to be regarded in resolving ambiguities in the language of the will, or in completing the intention but partially expressed therein, connotes but the one circumstance that the testator was domiciled in one state or country and the subject of the devise was situated in another, it may be easily displaced by additional facts and circumstances which may be properly brought

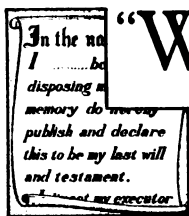
to bear on the testator's intention. Indeed, it is possible that both *lex rei sitæ* and *lex domicilii* may be displaced and the law of a third jurisdiction invoked, by reason of indications in the will or in the surrounding facts and circumstances that the testator had that law in mind. As an abstract proposition, however, and within the limits in which any general principle on this subject must necessarily operate, the weight of authority seems to support the view that it is the *lex domicilii*, rather than the *lex rei sitæ*, that is to be regarded in the construction of a devise of real property, in the sense of ascertaining the testator's intention in respect thereof, as distinguished from the effect of the devise under rules of property.

NOWHERE do the infirmities of human nature appear in all their hideous nakedness, and nowhere do the hallowed and sometimes unsuspected virtues of commonplace lives shine forth with so clear a lustre, as in the musty records of the probate court. Those faded and yellow documents reveal the secret springs of human nature as they are revealed nowhere else this side of the final judgment seat. To a student of human nature, the open pages of a dead man's will, no matter how long ago he may have penned the words, have an absorbing interest from the volumes that may be read between the lines. The whole gamut of human passions finds expression in such instruments: pride, ambition, love, hypocrisy, avarice, charity—every motive from saintly benevolence to malignant revenge.—

WILLIAM P. BORLAND, Dean of Kansas City School of Law and author of Law of Wills.

Lay Views of Testamentary Capacity

BY HENRY C. SPURR



"**W**AS the testatrix, in your opinion, of unsound mind?"

This question was not long ago put to a policeman on the witness stand, in a contest over the will of a woman who, to the consternation of relatives, left \$60,000 to charity. The officer, with a solemnity of manner indicating that he fully appreciated the importance of the inquiry, answered in the affirmative.

"Why," he said, "she would order me from in front of her house, saying, 'I don't need a policeman; you are never around when you are needed, anyhow.'"

The judge turned to the witness in undisguised surprise, and, with a touch of sarcasm in his voice, asked:

"Do you think she was insane, because she said that policemen could not be found when wanted?"

"Yes," was the response.

The answer raised a laugh in the court room; and yet, while it must be admitted that this—to use a popular expression—is going some as a test of insanity, still it would hardly do to say that it is a record breaker, among the strange views entertained by laymen as to what will disqualify a person from disposing of his property by will. Those who might have been the favored objects of the bounty of a decedent, and their friends and neighbors, set up an extreme standard of testamentary capacity. The body must have been in a high state of preservation and the intellect in a most perfect condition of integrity to enable a person dying, to thwart the wishes of the living. Above all, he must have spoken with understanding and acted with circumspection at all times and places, if he expected to get an unpopular will through without having a detailed account of his physical and mental peculiarities spread upon the minutes of the court.

A witness was once asked why he

thought that, at a certain time, the testator's mind was wavering.

"Because," he replied, "when I asked him where the women were, he said, 'Was sagt,' and looked queer."¹

So, the good old German, who had responded to a question he had failed to understand, in a perfectly natural manner, was, because not comprehended by the witness, deemed unfit to make a will.

In a Michigan case² a woman swore that she thought the testatrix was competent to execute a deed, but not a will. "A will," she explained, "is very different." And this is a very good illustration of the singular impression prevalent among laymen, that a much higher degree of mental capacity is required to make a final disposition of one's property than is needed to make a deed or contract, and the logic is that a will is very different.

It may therefore be somewhat astonishing to laymen holding such extreme views to learn that one may have the capacity necessary to make a valid will, although he smokes fifteen cigars a day,³ goes fishing and hunting without result,⁴ loses his way in returning from church,⁵ refuses to decide upon selling a crop of grain,⁶ or mistakes squirrel tracks for rabbit tracks when there are no rabbits in the vicinity,⁷ and that a mother may fail to take the advice of her son as to the disposition of a piece of real estate;⁸ and that a man may ask 10 cents a pound for shoats, when the market price for hogs is 6 cents,⁹ without being mentally incompetent for the testamentary act.

¹ Cauffman v. Long, 182 Pa. 73.

² Hoban v. Campau, 52 Mich. 346, 17 N. W. 797.

³ Berry v. Safe Deposit & T. Co. 96 Md. 45, 53 Atl. 720.

⁴ Scarborough v. Baskin, 65 S. C. 558, 44 S. E. 63.

⁵ Wilson v. Hays, 109 Ky. 321, 58 S. W. 773.

⁶ Cauffman v. Long, 82 Pa. 73.

⁷ Re Lewis, 51 Wis. 101, 7 N. W. 829.

⁸ Re Bowers, 27 Pittsb. L. J. N. S. 237.

⁹ Graham v. Deuterman, 244 Ill. 124, 91 N. E. 61.

A testator's walk may become less elastic than usual and degenerate into a shuffling gait;¹⁰ he may walk the streets with no particular object in view, and have a serious, solemn expression, when walking;¹¹ he may partially lose his hair and teeth, and the use of his legs to such an extent as to require crutches;¹² he may talk wildly after being run over by a railroad car;¹³ being old, he may beg his granddaughter to play the piano, and then, contrary to his accustomed dignity, dance in the presence of guests;¹⁴ he may believe that the enfranchisement of women will work the downfall of the Republic;¹⁵ he may undergo for a short time the extremes of sorrow and depression at the loss of his wife;¹⁶ or, on the other hand, may play a violin when his wife is dead in the house,¹⁷ without losing the right to dispose of his property.

So, one is not mentally incompetent to make a will, although he has unbounded faith in a certain patent medicine, using it to an excessive degree and recommending it to others;¹⁸ or believes in witches and "spooks";¹⁹ or plants corn with a handkerchief on his head;²⁰ or contemplates erecting a monument 100 feet higher than any known monument or pyramid;²¹ or gathers stones and pebbles from the seashore to ornament his garden;²² or fails to call a doctor to treat him for indigestion;²³ or searches for the buried treasures of Captain Kidd;²⁴ or keeps chickens in his house;²⁵ or pro-

vides kennels for dogs in his drawing-room;²⁶ or loves money and calls a security his god;²⁷ or mistakes property for blessedness;²⁸ or uses blasphemous language when racked with pain;²⁹ or bequeaths an estate to a society for the prevention of cruelty to animals, on the theory that men's souls, after death, pass into the bodies of animals.³⁰

And, finally, it may astonish a layman to know that one may direct that his bowels be converted into fiddle strings;³¹ be under the delusion that he had lost a thumb;³² believe that one half of his body is dead, that he breathes only with one lung, that only one half of his heart performs its functions, and that he is a double man;³³ or fancy he cannot drink milk or eat salt or butter, and be averse to eating meat;³⁴ or even fail to believe in the saving efficacy of infant baptism and the doctrine of the real presence,³⁵ —and still be able to will his property contrary to the wishes of others.

One of the most striking examples of the extent to which a person may be indulged in his eccentricities of beliefs and manners, without affecting his testamentary capacity, is afforded by a South Carolina case: In this case the testator, among other things, believed that all women were witches, and would not sleep on a bed made by a woman; he thought some of his relations were in his teeth, and, to get them out, had fourteen sound teeth drawn; he had the quarters of his shoes cut off, saying that if the Devil got into his feet, he could drive him out the easier; he had holes cut on each side of his hat, so that if the Devil came in on one side, he could drive him out on the other; he always shaved his head close, so that in a contest with the witches they might not get hold of his hair; and also, for the purpose of making his wits glib, he had swords of all sizes and shapes

¹⁰ *Berry v. Safe Deposit & T. Co.* 96 Md. 45, 53 Atl. 720.

¹¹ *Tarr's Estate*, 3 Pa. Co. Ct. 319.

¹² *Bush v. Lisle*, 89 Ky. 393, 12 S. W. 762.

¹³ *Carroll v. Norton*, 3 Bradf. 291.

¹⁴ *White v. Starr*, 47 N. J. Eq. 244, 20 Atl. 875.

¹⁵ *Chrisman v. Chrisman*, 16 Or. 127, 18 Pac. 6.

¹⁶ *Ouachita Baptist College v. Scott*, 64 Ark. 349, 42 S. W. 536.

¹⁷ *Bennett v. Hibbert*, 88 Iowa, 154, 55 N. W. 93.

¹⁸ *Winn v. Grier*, 217 Mo. 420, 117 S. W. 48.

¹⁹ *Van Guysling v. Van Kuren*, 35 N. Y. 70.

²⁰ *Bennett v. Hibbert*, 88 Iowa, 154, 55 N. W. 93.

²¹ *La Bau v. Vanderbilt*, 3 Redf. 384.

²² *Forman's Will*, Tucker, 205.

²³ *Wallace v. Whitman*, 201 Ill. 59, 66 N. E. 311.

²⁴ *Thompson v. Quimby*, 2 Bradf. 449.

²⁵ *Re Murphy*, 41 App. Div. 153, 58 N. Y. Supp. 450.

²⁶ *Yglesias v. Dyke*, Prerog. Ct. 2 Taylor, Med. Jur. 556.

²⁷ *Iverson v. Ivison*, 80 App. Div. 599, 80 N. Y. Supp. 1011.

²⁸ *Eddey's Appeal*, 109 Pa. 406, 1 Atl. 425.

²⁹ *Bush v. Lisle*, 89 Ky. 393, 12 S. W. 762.

³⁰ *Bonard's Will*, 16 Abb. Pr. N. S. 128.

³¹ *Morgan v. Boys*, 2 Taylor, Med. Jur. 555.

³² *Jones v. Goodrich*, 5 Moore, P. C. C. 16.

³³ *Hollinger v. Syms*, 37 N. J. Eq. 227.

³⁴ *Jenckes v. Probate Court*, 2 R. I. 255.

³⁵ *Hartwell v. McMaster*, 4 Redf. 389.

made,—fifteen or twenty in the course of a year,—which he was always altering,—one 4 feet long, with two edges; another 11 inches wide by 14 long, with a handle, and made by a neighboring blacksmith to enable him to fight the Devil and witches with success. In the daytime he dozed in a hollow gum log for a bed, and at night kept awake, contending against the Devil and witches. At one time he fancied he had the Devil nailed up in the fireplace, in one end of his house, and by a mark across his room, over which he would never pass, he never suffered the floor to be swept. He dwelt in a house worse than any of his negro houses, and his bed was a split hollow gum log, with one or two blankets, and in this gum he would sometimes keep two or three razors and as many pistols. He had no chair or table or platter or dishes or plates. He ate with a forked stick, and would not drink out of a tumbler after another person, to avoid harm. A few years before his death he went to live with a certain person, who would not receive him into his family, but who built a house for him, about 12 feet square. The testator complained that it was too large, and had one built 3 feet wide, 5 feet long, and 4 feet high, in which he ate, slept, and dozed away his time. His wearing apparel, at the time of his death, was appraised at \$1.³⁶ In spite of all of these singularities he was held competent to make a will, having been shown to have good business capacity and to have conversed sensibly on most subjects.

On the other hand, a testator who took borax "to weld up his inwards;" who refused to take food until others had taken of it, for fear of poison; who asserted that chloroform angels had saturated his bedclothing to kill him; that his relatives and Indians were endeavoring to shoot him; who always put a quantity of salt in his tea to destroy the poison which he claimed had been put into it to kill him; who sometimes for half a day at a time would dig into the earth with an old bayonet to kill devils; who dug holes about 2 feet deep around his house, poured in

water to drown out the devils; and who did many other things of a similar nature,—was held not to possess testamentary capacity, where the will bequeathed to his executor, a gentleman of the highest character, a sum large enough to be over and above a bribe that might be offered to him by the brothers and sisters of the testator "for the redemption of this will and their heirship to my estate," and disinherited every relative, and gave his estate to charities.^{36a}

So, while a man's eccentricities and delusions are a part of his liberties, disappointed relatives may find some ground to stand upon, if he hears too many voices in the whistling wind, or receives too many spiritual visitors, since such manifestations may affect the testamentary act itself.³⁷

He must not let his belief that he is the son of George IV., and that when he was born a large sum of money was placed in his father's hands in trust for him; that he was robbed of it by his father by a diversion of a part of the trust fund from him to his brother;³⁸ or the belief that his wife, who is old, is maintaining improper relations with clergymen of advanced years and high character,³⁹—affect the making of the will. Being a white man, married to a white woman, he must not labor under the delusion that he is the father of a mulatto child;⁴⁰ and, it would seem that he must not entertain too seriously the notion of establishing a stone quarry on the planet Saturn.⁴¹

In conclusion, it may be said that the courts have been able only in a very general way to define testamentary capacity, and that the question is regarded as more properly one of fact than of law.

[An exhaustive discussion of the question "what is testamentary capacity" may be found in Mr. Spurr's note appended to the case of *Slaughter v. Heath*, 27 L.R.A.(N.S.) 1.—Ed.]

^{36a} Re Lockwood, 2 Connoly, 118, 8 N. Y. Supp. 345.

³⁷ American Seamen's Friend Soc. v. Hopper, 33 N. Y. 619.

³⁸ Smee v. Smee, L. R. 5 Prob. Div. 84.

³⁹ American Seamen's Friend Soc. v. Hopper, 33 N. Y. 619.

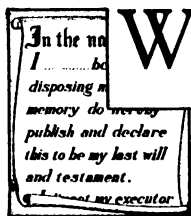
⁴⁰ Florey v. Florey, 24 Ala. 241.

⁴¹ McReynolds v. Smith, 172 Ind. 336, 86 N. E. 1009.

³⁶ Lee v. Lee, 4 M'Cord, L. 183, 17 Am. Dec. 722.

Some Wills of Noted Lawyers

BY WALTER M. GLASS



WHETHER the old saying that "a lawyer who tries his own case has a fool for a client" is applicable to Samuel J. Tilden in the matter of drawing his will is not known. It was

thought for some time that the will was drawn, or at least approved, by Charles O'Connor and James C. Carter, two of the most eminent lawyers in New York; but later statements, made on what is apparently good authority, are to the effect that they had nothing at all to do with the will, and consequently it is not definitely known who was responsible for it. It would hardly seem possible that Mr. Tilden himself could have made such a mistake had he been acting for someone else. The statement has been made that Mr. Tilden had some doubts as to the validity of those clauses which the court subsequently condemned, and had spoken to Mr. Carter about it, but nothing more came of it.

In summing up the provisions of the Tilden will, the court, in holding it invalid (*Tilden v. Green*, 130 N. Y. 29, 14 L.R.A. 33, 28 N. E. 880), stated that the testator in substance said: "I have determined to devote my estate to charitable, educational, and scientific purposes. I have formed no detailed plan how that purpose can be executed, but under the law of New York it must be done through and by means of a corporation. I request you to cause to be incorporated an institution to be called the 'Tilden Trust,' with capacity to maintain a free library and reading room in the city of New York, and such other educational and scientific objects as you shall designate; and, if you deem it expedient,—that is, if you think it advisable, and the fit and proper thing to do,—convey to that institution all or such part of my residuary estate as you choose; and if you do not think that course advisable, then apply it to such

charitable, educational, and scientific purposes as in your judgment will most substantially benefit mankind."

It will be noted that the discretion of the trustees was indefinite both as to the amount which they were to give to the corporation to be formed, and also as to whether they should give any at all to the incorporation; and the validity of the bequest was denied upon the ground of this complete discretionary power to convey or not to convey to the suggested beneficiary. The trustees procured the incorporation of the "Tilden Trust," and elected to convey to it the entire property, but the court held that the invalidity of the charitable trust because of its uncertainty could not be cured by anything done by the trustees to execute it.

In striking contrast with the Tilden will is that of his eminent contemporary in law and politics, Roscoe Conkling, the text of which is as follows: I, Roscoe Conkling, of Utica, make, publish, and declare my last will and testament as follows: I give, devise, and bequeath to my wife, Julia, and to her heirs and assigns forever, all my property and estate, whether real or mixed, and I constitute and appoint my said wife sole executrix of this my last will. It would undoubtedly take a better lawyer than even Mr. Conkling to break his will.

In passing upon the validity of the will of President James K. Polk, a Tennessee court of chancery said: "This will was written by the testator, with his own hand, in the executive mansion at Washington, at a time when he was President of the United States. He was a lawyer of recognized ability, had filled many high public offices with distinction, and reflected great honor upon his state. His will was witnessed by a law partner and a Senator in Congress, and named as executor one of the justices of the Supreme Court of the United States. It comes to us with the impression of having been carefully thought out before it was formally put down and published as his last testament." Among other provi-

sions, his home, known as Polk Place, situated in the city of Nashville, was given to his wife for life, and upon her death it was bequeathed to the state of Tennessee in trust to be occupied and enjoyed "by such one of my blood relatives having the name of Polk as may be designated by the said state," and if there were no blood relatives of that name, then "by such other of my blood relations as may be designated by the said state to execute this trust." The occupant was to keep the same in repair and prevent it from dilapidating or falling into decay, to pay the taxes, and to preserve and keep in repair "the tomb which may be placed or erected over the mortal remains of my beloved wife and myself, and shall not permit the same to be removed, nor any buildings or other improvements be placed or erected over the spot where said tomb may be."

This will was declared invalid as tending to establish a perpetuity. It was not a gift for public charity, and was merely an attempt to retain the property for the use of the blood relatives of the testator. In regard to the provisions for the preservation of the testator's tomb, the court said: "It were better to let some tombs pass into the hands of strangers, and fall into ruins, than to permit every testator to devote to his own grave as much land as his own taste might suggest or his purse could bear, and thus withdraw it forever from business relations."

There can be no doubt that the will would have established a perpetuity, and consequently was invalid, but the case would seem to be one in which, if the court had had any discretion in the matter, it might have been exercised to sustain the will, which had for its main purpose the preservation of the tomb of one of the Presidents; and this especially since Polk left no direct descendants, and the bill in chancery to set aside the will was filed by a large number of claimants, some of whom had but a one three-hundred-and-thirty-seventh interest therein.

The will of Francois Xavier Martin, presiding judge of the supreme court of Louisiana, was in the holographic form and as follows: "I institute my brother, Paul Barthelemy Martin, heir to my whole estate, real and personal, and my

testamentary executor and detainor of my estate. In case of his death, absence, or disability, I name my friend and colleague, Edward Simon, my testamentary executor and detainor of my estate. New Orleans, this twenty-first day of May, eighteen hundred and forty-four." It would seem that a will so short and concise could not be attacked upon any ground, so long as there were no direct descendants of the testator, and all of the property was left to his nearest relative, but nevertheless the will was attacked by the state, and a very bitter contest ensued. The brother to whom the property was left was a resident of the state, and consequently the estate would not be subject to any taxation, where in the absence of a will the great bulk of the estate would pass to nonresident next of kin, and consequently be subject to a 10 per cent tax. The state claimed that the brother had been fraudulently named as sole beneficiary, for the purpose of defrauding the state of the tax which it would otherwise have obtained. At the time the will was written, Judge Martin was blind, and it was claimed that it was a physical impossibility for him to have written the will himself. But the will was sustained by the court over which Judge Martin had presided with great honor for many years.

The will of "the Great Chief Justice," John Marshall, was also a holographic will, and divided his estate, or the great bulk of it, equally between his daughter and five sons, his wife having previously died. The share of the daughter was left in trust to a nephew for her use and that of her family, and for the education of her children, not to be subject to the control of her husband or to the payment of his debts. This trust, as he says, was made "without derogating from the esteem and affection I feel for my son-in-law," and because "I have long thought that the provision intended by a parent for a daughter ought in common prudence to be secured to herself and children, so as to protect them from distress, whatever casualties may happen." The son-in-law was suggested as agent to manage his daughter's estate, and if he survived the daughter, it was recom-

mended that one half of the annual profits of the property bequeathed in trust for the daughter and her family be paid to the son-in-law for his own use.

Chief Justice Marshall's love for his wife is well known and frequently mentioned by his biographers. A bequest to one of her friends was made "as a token of my wife's gratitude for long and valuable attentions." The will also contained the following: "My beloved wife requested me while living to hold in trust for our daughter one hundred bank shares, to pay the dividends to her during my life, and to secure the same to her and her children when Providence should call me, also, from this world. In compliance with the wish of her whose sainted spirit has fled from the sufferings inflicted on her in this life, I give," etc. He had written a beautiful eulogy of his wife on the first anniversary of her death, and a copy of this was inclosed in the will for each one of his children. A thousand acres of land was given each of his grandsons named John, and if none of his sons should have a son by that name, then the land was to be given to the son named Thomas, "in token of my love for my father and veneration for his memory. If there be no son named John or Thomas, then I give the land to the eldest sons, and if no sons, to the daughters."

He had first appointed his five sons and one son-in-law as executors of the will, but fearing lest the number might produce confusion, he changed his purpose, and selected one of his sons to be sole executor, "directing that no surety shall be required of him, and allowing him \$1,000 for his care and pains."

The Chief Justice owned a number of slaves, and in the first codicil to his will he makes provision for his factotum and body-guard, Robin. If he so desired he was to be emancipated, and money was given him to leave the state; but if

his emancipation could not be provided for consistently with the law and the slave's own inclination, he was given the privilege of choosing his master among the sons, or he might be held, if he desired, for the daughter by the same trust as the other property had been devised to her.

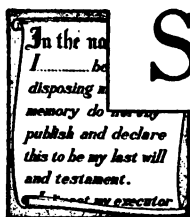
The will of Grover Cleveland, recently admitted to probate in New Jersey, is written in very clear and concise language, and there is no necessity of calling in the aid of equity to construe it. After providing for the payment of debts and funeral expenses, and for the erection of an appropriate monument "only moderately expensive," he gave small personal gifts to nieces and nephews and to one or two personal friends. Then the sum of \$10,000 was given to each of the two daughters and two sons, to be paid to them respectively as they shall arrive at the age of twenty-one. Until the legacies were paid or should lapse, the income was to be paid to his wife, to be applied by her to the support and education of the children, without any liability on her part to any of the children on account thereof. All the rest and residue of the property was given to "my dear wife, Frances F. Cleveland," and she was also appointed one of the executors of the will. In the clause of the will making the provision for the support of the children occurs this somewhat peculiar provision: "If, however, either of my said daughters shall, before her legacy becomes payable, cease for any reason to reside with her mother, the income arising from the investments of her legacy shall be paid to such daughter."

Whether Mr. Cleveland in making this provision had in mind differences which would cause a separation of the family, or only a possible early matrimonial adventure on the part of the daughters, is not stated.



The Drawing of Wills

BY ALBERT S. OSBORN



SINCE the discovery of fraudulent substituted pages in the Tungsten Electric Light Patent Application a few years ago, in Washington, and the conviction of a patent examiner and patent attorney, the officials of the Patent Office have required that the various papers connected with a patent application must be fastened together with tape, both ends of which go under an attached seal. This provision, while not a perfect protection, makes it more difficult to substitute fraudulent pages.

The same danger of fraudulent substitution surrounds modern methods of preparing wills, and some provision of a similar nature would no doubt prevent many frauds. In a recent case a will devising more than five million dollars' worth of property was probated, that was written on more than a dozen separate sheets of paper, each sheet complete in itself and ending a paragraph, and the sheets were fastened with a single ordinary paper fastener at the top. In another case a will was written on one sheet of paper, with the signature of the testator at the end of the will; and a separate sheet contained only the attestation clause and the signatures of the witnesses, making it possible to write any kind of a will, and attach it to this latter sheet.

Most people are honest, but some of these practices are an open temptation to crime, and should be changed. The Patent Office regulation would be a good one, if some approved method of attaching seals could be employed. In many law offices where wills are drawn, the separate sheets of even important wills are fastened with only cheap paper fasteners, than can easily be removed, and in some important cases have been removed.

It would be a commendable practice, when possible, to write all wills on one

continuous sheet of paper, with the statement at the close that only one sheet is used. The length of three sheets, or six full pages of legal cap paper, would probably contain the matter in a very large proportion of wills; and a sheet of paper equal in quantity to six pages could readily be obtained, and would not be inconvenient to handle. Stationers would no doubt find a ready market for such paper, if it was prepared and offered for sale in various lengths for this specific purpose. Lawyers could, no doubt, charge enough more for the drawing of wills to cover this additional expense, and clients would be sure to appreciate this careful attention to an important detail.

It is not often easy to substitute a page in any document,—especially after some time has elapsed,—but it can be done, and has no doubt been done successfully in many instances. If the substitution is immediate, and by the parties who made the genuine pages, no one, of course, could detect the fraud, if proper means had been employed to accomplish the end.

The opinion that prevails almost universally, that a typewritten page can be substituted successfully at any time, is erroneous, and those who have given attention to the subject know that this is a very difficult feat to accomplish; but if such an act is done at once, or within a comparatively short time, it may be difficult, or even impossible, to detect the fraud.

Many fraudulent wills are no doubt admitted to probate. Beneficiaries are many times willing to sacrifice part of a claim in order to realize promptly on the estate of a dead relative, and fraud is often thus encouraged by settlements that should not be made.

The New York legal requirements regarding witnesses to wills are perhaps as effective as any in preventing fraud, although it would be well if one at least of the required two witnesses should be a public officer of some kind. This re-

quirement would not often be a hardship, and would emphasize the fact that witnesses to such documents ought to be those whose standing in the community is of such a character that their credibility could not be successfully attacked. All kinds of nonentities are used as witnesses to wills,—servants, hired men, and dependents whose testimony regarding a document is not very forcible as evidence.

There are those who approve the practice followed in some states, of not requiring any witnesses to a will that is entirely in the writing of the testator; but the difficulty with this practice is that under these conditions a fraudulent will may contain only a half dozen words, and may be written in pencil in such a way as to make it difficult to decide definitely as to its genuineness, so that on the whole it is better to require two witnesses.

For numerous reasons it would be desirable to have wills deposited with some public officer, instead of being "found," as they many times are, in peculiar and unusual places. It would perhaps be difficult to make a regulation of this kind, but the practice could be encouraged and in a large measure established by the advice of the legal profession. This practice would be especially desirable in those cases where, for any reason, a contest may be anticipated. There is, of course, a disposition on the part of surviving friends and relatives to respect the wishes of a testator regarding the disposition of his property, even though his requests are not in legal form; and if he should himself deposit a will with a surrogate or some other proper officer, this act would in itself be sufficient answer to many possible attacks upon the document.

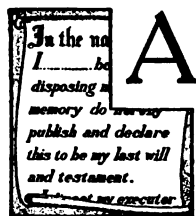
THERE is no difficulty in the case of a raving madman or a driveling idiot in saying that he is not a person capable of disposing of property; but between such an extreme case and that of a man of perfectly sound and vigorous understanding, there is every shade of intellect, every degree of mental capacity. There is no possibility of mistaking midnight for noon, but at what precise moment twilight becomes darkness is hard to determine.—

LORD CRANWORTH in *Boyse v. Rossborough*,
6 H. L. C. 45.

The Antiquated Seal

BY HARRY SHELMIER HOPPER

of the Philadelphia Bar



A MOST absurd thing connected with legal business is the little piece of red, green, or blue paper or daub of sealing wax which we often place at the end of a signature to a deed, will, or other important document. It is a very small thing in size, but one to which a great deal of importance is frequently given. It is a relic of antiquity, and no plausible excuse can be invented for continuing its use.

Some of the more progressive states have practically abolished its use by legislation, which deprives it of any technical legal significance. In others, however, it is still used with all seriousness and solemnity; and an almost magical value is given to it by dignified judges, that is little less than ridiculous.

This little seal is emphatically un-American. It is one of the blind, stubborn customs and formalities inherited from the common law of England centuries ago. The tendency of modern legislators, judges, and lawyers is to simplify the form of legal documents and of legal procedure, but the seal still remains. It often happens that old established customs and methods are not abandoned quickly, and an absurd reverence is given to things long since proven burdensome and out of date. The seal is one of the customs slow to be given up. The abolition of the seal after a signature is a subject that should receive the prompt consideration of those who are endeavoring to establish uniformity of laws throughout the United States.

In those slow and deliberative states in which the seal is still revered, its presence or absence after a signature gives a document a special significance, and causes technical objections and distinctions that hinder and delay the cause of justice. How unjust it is that a fortune may be won or lost, or the title to prop-

erty be subjected to prolonged and expensive litigation, because of a dispute about a seal? True it is that judges who are progressive enough to endeavor to throw off the burden of unjust precedent will, and do try to, deal liberally with the subject. A man died years ago, leaving part of his estate to another to enjoy while he lived, with the privilege of devising it, at his death, to others whom he might select, by a writing under his "hand and seal." A writing was executed so devising the property, but it was contested by others claiming the property, upon the technical ground that the paper contained no seal after the signature, and the devise was therefore void. A wise Philadelphia judge closely scrutinized the signature, and, after carefully listening to the arguments of lawyers, decided that at the end of the signature there was an extra scroll or flourish made with the pen with which the signature was made, and that this was sufficient in law to constitute a seal. The decision was technical, but it was just. A contrary decision would have been fully as technical, but it would have been manifestly unjust. A decision like this may remove some of the unjust rigor of the law, but it does not reform it altogether. Law dictionaries, text-books, and digests devote special chapters to the subject of the seal, its definition, history, and purpose; but in this twentieth century—a century of progress—we are governing everyday life and business on a common-sense, practical basis, and trimming off the frills and useless ornaments that no longer help us to accomplish any good purpose. Historical reasons and ancient precedents must give way to American clear-headedness and practical methods. Legal authorities go back to the books of Lord Coke, to get a correct definition of a seal. Prolonged arguments and discussions have taken place in times past as to what kind of a device constituted a seal in the eyes of the law. Blackstone has said that its antiquity goes back to

the ancient Jews and Persians; and he quotes a transaction from the Bible, in the book of Jeremiah, describing the "sealing" of a transfer of land. The same author said that in Saxon times seals were not much used in England. Learning or ordinary education was not general, and many people could not write their names. Those who could not write made a mark or a seal as their signature, and a custom came into use, even by those who could write, of affixing the sign of the cross, with their signature. The practice of sealing continued when people became more learned and could write their names. At the time of the conquest, the Norman lords introduced waxen seals. Then followed various designs of individual seals, and finger rings were used to make impressions in a waxen seal. It was long the law that a seal was the prime requisite of a deed, regardless of the signing of the name. The definition of a legal seal, as laid down in the books, is both interesting and amusing, but in this practical and progressive age the subject seems almost silly and childish. Various substances and designs have come before courts for judgment as to whether the particular substance or design was a seal in legal signification and effect. The most familiar seals are those made of circular pieces of colored paper with saw-like edges. The most formal seal consists of a circle of hot sealing wax dropped upon the paper, and a design or initial impressed upon it. Combinations of both wax and paper have also been used; also pieces of red tape or green ribbon have been run through slits in a parchment deed, and a wax or paper seal attached. In this connection, a court once solemnly decided that a piece of ribbon so attached, without a wax or paper seal or wafer attached, was not a legal seal.

When a lawyer wants to have full force given to a document which he offers in evidence, he draws the attention of the court to the fact that it has been duly "sealed," and therefore cannot be questioned, because the seal implies that a consideration, something of value, has been received by the party who has signed it. Such a statement always

makes a profound impression upon the presiding judge, who, in turn, proceeds to make a similar impression upon the jury. Every person taking part in the proceeding, however, knows, as a matter of truth, that the affixing of the seal has been a most perfunctory part of the executing of the deed, and really does not indicate whether a consideration has passed or not. But the ancient traditions must be kept up and followed, whether just or not.

Instances occur in which agreements are prepared to be signed by business men. Their respective attorneys examine the papers. One does not think they are as binding upon the other party as they might be. It is then suggested that an additional clamp or band be placed around the agreement by attaching seals to the signatures. The seals are duly affixed, and all parties are satisfied that no question of a valuable consideration having passed can now be raised. The effect is truly magical, but it is a convenient fiction and extremely arbitrary.

This legal reverence for the seal is a bowing down to a fetish, without excuse or justification; in this enlightened age. No reason exists for continuing it. It is contrary to the modern spirit of simplicity, conciseness, and clearness in all business, commercial or legal, in court or out.

It has been asserted that the act of affixing a seal to a document indicates that the execution of it was attended with deliberation and solemnity, and that the parties to it were duly impressed with the importance of the business they were reducing to writing. As a matter of fact, however, there is no solemnity whatever about a seal, upon the human mind in these days. A man either does or does not know what he is signing, and the presence of a seal does not affect his consciousness. A scroll of ink made with pen or type, or a piece of gaudy paper, or a lump of wax, may amuse him, but none of these things produce any feeling akin to solemnity in him. Neither is there deliberation. He does not pause to affix the seal. The scrivener has already done that for him. And where one seal has appeared beside several signa-

tures, it has been judicially decided that one person may adopt the seal already used by another.

Some authors of legal treatises, some judges, some lawyers, some legislators, frankly admit that the theoretical solemnity of "sealing" is totally unsuited to modern business methods; but when they get together to frame laws, they do not have the courage to effect the passage of a law to abolish the seal. Sometimes the opposition of one or two fossilized men, who see good only in things as they are and have been, will prevail against the purposes of progressive ones. These remarks apply, of course, only to those states in which the silly seal still commands respect in dignified courts of justice, and not to those in which the ridiculous talisman has been turned out of court.

Some years ago a bill was introduced into the Pennsylvania legislature to abolish the distinction between sealed and unsealed instruments of writing, but it was put to sleep in a committee and never more heard of. It was published in a legal journal, and brought forth some debate in print, and it was surprising that some supposedly wide awake lawyers should oppose its passage.

To adhere to the use of the seal is simply a stubborn desire to wear old clothes without regard to the fact that they are out of style, worn out, and require frequent patching. We recently ridiculed people who walked the streets, clad in the costume of ancient Greece, but we adhere to just as amusing a custom and one still more absurd, when we insist upon using the antiquated seal.

A variety of subjects are being suggested for consideration in making the legislation uniform throughout the United States. Surely one of the simplest to deal with is the ancient seal. Let us discard it altogether, and hereafter think of it as something of historic interest only, as we now do of the customs and usages of the feudal system. The time and the opportunity are ready, and it is only action that is needed. Let us have uniform laws abolishing the seal. Such action will lessen litigation, and this is just as much the duty of lawyers and legislators as it is the duty of health officers and physicians to prevent disease. Delay in legal proceedings will be lessened by taking away opportunities for technical pleas, and honesty will be encouraged by depriving the dishonest of tricks to avoid their just obligation.

THE right is conceded by common law throughout civilized countries that a man should dispose of his property as he sees fit. A great American judge has said that old age is solitary, and often the only way in which an old man can command the attention to his infirmities that they merit is this right of disposition.—

WIRT DEXTER, in the *Ward* will case.

Oddities of Testators

The Irish gentleman, says Tit-Bits, who has left \$5,000 to a religious house on condition that his wife enters it and spends the rest of her life in prayer is another example of the quaint methods by which the dead sometimes endeavor to control the living.

It was a blunt farmer who drew up his will leaving \$500 to his widow. When the lawyer reminded him that some distinction should be made in case the lady married again, he doubled the sum, with the remark that "him as gets her'll deserve it."

It was a wealthy German who, fifteen years ago, bequeathed his property to his six nephews and six nieces, on the sole condition that each of the nephews married a woman named Antoine and each niece married a man named Anton. The first born of each marriage was to be named Anton or Antoine, according to sex. Each marriage was also to take place on one of St. Anthony's days. What happened to the nephews and nieces is "wropt in misery" in the office of the German registrar general.

An exchange states that the winding up of the estate of the widow of a former French consul general at Jerusalem, an old lady, who died two years ago, leaving property valued at \$6,000,000, will be no easy matter. The deceased seems to have been incessantly occupied in making wills and adding codicils. The last codicil discovered, which is dated August 16, 1907, "confirms the two last testaments," revoking all others. But the lady drew up in all fifteen wills. Nine of the number are plainly revoked by the above codicil, but six others all bear the same date, May 9, 1904.

Two of these appear to be the "last testaments" referred to in the codicil, as no later wills have so far been found. But which two of the six are the latest?

The lady evidently wrote them at different hours of the same day, but there is no indication in any of them of the precise moment. The point is an important one, as by three of the six wills, but not by the others, a female relative of the

deceased inherits large sums, which the universal legatee may or may not have to pay.

The courts are now engaged in an attempt to determine by "internal evidence" which of the wills most probably expressed the latest wishes of the deceased, French jurisprudence allowing in such matters considerable latitude.

Without any warning a Washington boy of eight, says the Cleveland Plain Dealer, has been brought face to face with the fact that life is frequently a very hard proposition. The boy is to receive an estate, value not named, under certain conditions. These conditions are severe enough to leave the fate of the estate, value not named, in considerable doubt. The boy must graduate from a public high school before he is fourteen; he must win a college degree before he is eighteen; he must study law six months at Oxford; he must graduate from West Point. After receiving his commission he must resign and complete his law studies and then practise the profession. All this he must accomplish by the time he is twenty-eight.

Incidentally he is to acquire proficiency in manual training, in dancing and in music, and is to beware of women. If he fails to meet these conditions he is to forfeit all claim to the property. Probably the boy is too young to appreciate the magnitude of these tasks, but it looks as if the coming twenty years would prove an exceedingly busy period for him,—with the shadow of failure always darkening the rugged pathway.

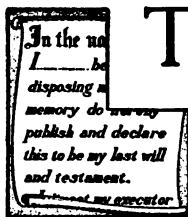
The man who made this peculiar will and imposed these exacting conditions may have had an exalted view of the importance of a thorough education, but the wisdom of his method and the value of his theory can only be told by the youth himself,—this hapless hero of a gigantic educational plot.

Later on it may occur to the young man to seriously consider the value of the estate as compared with the labor and sacrifices of the task.

The Importance of the Last Will and Testament

BY VIRGIL M. HARRIS

Trust Officer of the Mercantile Trust Company of St. Louis



THE North American Review in a recent editorial said: "The writing of a will is a serious and formal matter, and into one a man puts his deliberate and well-reflected intentions. This makes a will stupendously revealing, and to read one over is to come very close to the spirit of the man who wrote: to know his treasures, to understand his feeling toward men, and to measure his fitness for adventures among seraphic and angelic beings. The words a man desires to have read when he lies dumb, the gifts he leaves, the grace with which he gives,—all these lay bare the spirit, the heart of disposition, as few other things can. For a will is that which is to live after one, and it is written knowing that no wound inflicted can be remedied, no neglect repaired. How egotism, or miserliness, or conceit, or self-satisfaction can shine out in a will! How little exalting it is in most cases to read wills; and how often they turn us back to the authoritative statement that it is easier for a camel to pass through the eye of a needle!"

The power to dispose of property by will does not appear in any of the primitive systems of law. In the year 1902, the French government sent out a commission to make archæological investigations in Persia. At the city of Susa, they uncovered a stone on which were written the laws of Hammurabi, who reigned twenty-three hundred years before Christ, or one thousand years before Moses received the Ten Commandments on Mount Sinai. This Code has been translated by Professor Robert Francis Harper, of the Chicago University, and furnishes one of the most remarkable and readable books which has ever come

into my hands; it treats of the laws of money, banking, inheritance, weights and measures, divorce, dower, crimes, and, singularly enough, some of its provisions are present-day law. There is, however, no mention of wills.

In fact, the will, as we know it, is a Roman invention. Free liberty of disposition by will is by no means universal at this time. Complete freedom in this respect is the exception, rather than the rule. Homesteads generally, estates of dower and curtesy frequently, as well as other portions of an estate, are not the subject of devise or bequest.

Lord Coke says, "Wills, and the construction of them, do more perplex a man than any other learning,"—and Lord Coke was right; nor has the perplexity which he observed decreased since his time.

There never was a fitter application of Pope's line, "A little learning is a dangerous thing," than in the preparation of wills; and it is a most astonishing fact that men who have lived prudently, who have been conservative and successful in business, who have accumulated large wealth, who have been buffeted by every wave of misfortune, will attempt, by their own hands or through incompetent agents, to write their wills. It is always a hazardous undertaking, unless the instrument is of the simplest character. If one's child is sick, a doctor is called; if a man's roof is defective, a carpenter is sent for; if a horse throws a shoe, the animal goes to the blacksmith; yet, when it comes to the making of a will, perhaps the most solemn and consequential act of a man's life, the testator takes his pen, and frequently, without aid or counsel, does that which experience and our court records fully demonstrate he is incompetent to do.

Mr. Daniel S. Remsen, of New York, who is one of the highest authorities in

America at this time, on the preparation of wills, says that fully 50 per cent of wills contain some obscurity or omission. With this statement I find myself in complete accord. I believe that nearly half the wills written are open to attack and a large portion of them fatally defective. I have never seen more than a dozen perfectly drawn wills, gauged by the standards of perfect clearness, precision, and legality.

As stated by Mr. Remsen, "A will is an *ex parte* document, and is written from one point of view; it is the expression of the wishes of the testator regarding the work of a lifetime; upon its legality, depends the future happiness and welfare of the persons and objects most dear to the testator; and, whether viewed from a property or a family standpoint, it is often the most important document a man of large or small means is ever called upon to prepare."

Unfortunately the idea prevails that a will is a very simple instrument to prepare. Nothing in business life can be further from the truth; on the contrary, a will may be, and usually is, the most intricate of all legal documents. This is always true where there are gifts or devises depending upon contingencies, or where trusts are created. A deed or a contract may be changed; not so with a will, after the death of the maker. Foresight in its preparation is imperative.

There is a well-marked legal distinction between the words, "heirs, devisees, legatees, distributees, and legal representatives." Each of these terms has a clear and well-defined signification. One who has the preparation of wills must deal with the law against perpetuities. An estate cannot be tied up, under our law, for a longer period than "a life or lives in being and twenty-one years thereafter." This is not only the law of Missouri, but the general law of the land. The law of dower and curtesy is by no means simple. The law of vested and contingent remainders is a most intricate subject, and requires years of legal study to comprehend, and cannot be simplified. The creation of life estates and trusts demands the most careful inquiry. There are spendthrift provisions which are easier to break, than to prepare. The

statute of uses cuts an important figure in testaments. The provisions with reference to the powers of executors and trustees are very comprehensive, and must be framed with great care and precision. The subject of joint tenants by the entirety frequently requires the most profound consideration in the interpretation of wills.

I recently saw a decision of one of the higher courts of Missouri, where a resident of Pike county gave a large sum of money by will to his wife "to hold, possess, and enjoy during her natural life;" at her death the fund was to go to Westminster College, at Fulton, Missouri. The widow promptly set about to enjoy the fund by spending it; the court held, and properly, that she had a right to do so, and that Westminster College got nothing. The will was improperly drawn. Had it been stated that she should "enjoy the income," a different result would have followed.

A few months ago I saw a will in which an estate of \$1,000,000 was disposed of: the testator, under the will, divided the estate into ten parts, but overlooked the disposition of one of these parts.

There came under my observation, not long ago, a will drawn in Michigan: the testator owned property in Michigan and also in Missouri and South Carolina. The will had but two witnesses: it was effective in Michigan and Missouri, but in South Carolina, where three witnesses are required, it was inoperative.

Within the last few days, I examined the will of one of Missouri's most gifted and eloquent Senators, now deceased; an ample provision for his wife was followed by this clause: "The acceptance by my wife of the provisions for her benefit, contained in this will, shall bar all claim by her for dower in any real estate heretofore or hereafter conveyed by me to anyone." This attempted exclusion of the wife's dower is well-nigh meaningless: his intent was to preclude her right of dower in any real estate owned by him at the time of his death; but he said, "conveyed by me to anyone;" all real estate possessed by him at the time of his death was subject to dower, and not excluded.

A will was recently presented to me where the testator left a large estate;—one third to his wife, one third to a son, and one third to a grandson: the wife predeceased the testator. The question arose as to what became of the one third given to the wife.

If I make a bequest or devise to a "child, grandchild, or other relative," the property passes to the lineal descendants of these, in the event the legatee or devisee dies before I do, and it is otherwise as to all other persons: as to them, the devise or gift lapses; even the children of stepchildren would not take under these conditions.

It is said, "A will has no brother," meaning that no two are alike. The general rules of construction are too numerous and complex for a discussion here. Technical words are presumed to be used in their technical sense, unless a clear intention to use them in another is apparent from the context. Our courts are always busy in an endeavor to ascertain the intentions of testators. The truth is, few men write accurately and precisely. The proper use and selection of words in the construction of wills is a very grave duty.

A general outline of the framework of a will may be stated as follows:

(a) A will should revoke all former wills: if this is not done, the will may be taken in connection with others. If the testator is unmarried, he should state that fact. His statement does not make it true, but it may serve a very excellent purpose in thwarting the claims of designing persons.

(b) There should be a provision for funeral expenses, and suggestions with regard to a burial place and a monument.

(c) Provision for the payment of debts should be made, and the executor given full power to pay debts and to sell and convey any portion of the estate.

(d) Provision should be made for small bequests to relatives and friends, and for charitable purposes.

(e) Suitable provision for wife and children should be made.

(f) Provision should be made for trust features; these are operative only after the administration is ended.

(g) There should be a residuary clause which catches up and disposes of any portion of the estate not already disposed of, including lapsed legacies and devises.

(h) The executor should be named.

(i) The date and signature.

(j) Finally, the attestation.

To me it is incomprehensible that nine men out of ten who make their wills seek to hamper and restrain the remarriage of their widows; neither the age of the husband nor of the wife seems to deter a testator in this direction: on the other hand, I have never seen such a restriction in the will of a married woman; and this spirit of benevolence and trust, in a comparative view of the sexes, is, I believe, quite as marked in other directions, notwithstanding the lines of Saxe, which run:

"Men dying make their wills,
But women escape a work so sad;
Why should they make what, all their lives,
The gentle dames have had."

A man should make his will when he is in a normal and healthy condition. A sick man or a very aged man, as a rule, is not in a condition to judge fairly of the affairs of human life. He is apt to be unconsciously influenced and misled, or even coerced. He may be diverted from the natural channels of affection, right, and justice. Frequently the result is disastrous litigation, the breaking of domestic ties, and the exposure of family skeletons.

Sometime ago I wrote a will for an aged man, wherein he left considerable money to a friend, who, he told me, lived in a town in Ireland. The testator was on his deathbed. The beneficiary could never be found, and I doubt if he had a real existence.

No lawyer should be asked to write a will cheaply or hastily. The testator who has no proper appreciation of this service, and who drives a bargain for \$10, for that which is worth \$100 or more, usually gets about what he pays for.

Witnesses to wills should never be interested in the instrument. If the testator is aged, the witnesses should be those well acquainted with him; in fact, this is always a good rule, whether the tes-

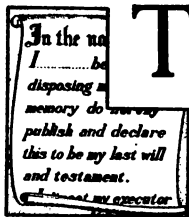
tator be old or young: this precaution may prevent much trouble and complication, and it has the sanction of our highest courts.

In making provision for children in wills, the corpus or principal fund is not infrequently to be turned over to them on arriving at legal age. According to my observation, the age of thirty is much preferable. It is not possible for any young man or woman at the end of mi-

nority to be possessed of much wisdom with reference to the care of property. Worldly knowledge is not congenital, and we have high authority that "in youth and beauty wisdom is but rare."

I recommend that of each will there be made a copy; the original should be placed in one safe place, and the copy in another. This very much lessens the chance of its being destroyed or falling into bad hands.

Oldest of Known Wills



THE discovery of the earliest known will was an event which possessed an interest for others besides lawyers, and there seems no reason to question either the authenticity or anti-

quity of the unique document which Mr. Flinders Petrie unearthed a few years ago at Kahun, or, as the town was known 4,500 years ago, Illahun. The document is so curiously modern in form that it might almost be granted probate to-day. But, in any case, it may be assumed that it marks one of the earliest epochs of legal history, and curiously illustrates the continuity of legal methods. The value socially, legally, and historically, of a will that dates back to patriarchal times, is evident.

It consists of a settlement made by one Sekhenren in the year 44, second month of Pert, day 19,—that is, it is estimated, the 44th of Amenemhat III., or 2,550 B. C., in favor of his brother, a priest of Osiris, of all his property and goods; and of another document, which bears date from the time of Amenemhat IV., or 2,548 B. C. This latter instrument is, in form, nothing more nor less than a will, by which, in phraseology that might well be used to-day, the testator settles upon his wife, Teta, all the property given him by his brother, for life, but forbids in categorical terms to pull down the houses "which my brother built for me," although it empowers her to give them to any of her children that she pleases. A

"lieutenant" Siou is to act as guardian of the infant children.

This remarkable instrument is witnessed by two scribes, with an attestation clause that might almost have been drafted yesterday. The papyrus is a valuable contribution to the study of ancient law, and shows, with a graphic realism, what a pitch of civilization the ancient Egyptians had reached,—at least from a lawyer's point of view. It has hitherto been believed that, in the infancy of the human race, wills were practically unknown. There probably never was a time when testaments, in some form or other, did not exist; but, in the earliest ages, it has so far been assumed that they were never written, but were nuncupatory, or delivered orally, probably at the deathbed of the testator. Among the Hindus to this day the law of succession hinges upon the due solemnization of fixed ceremonies at the dead man's funeral, not upon any written will. And it is because early wills were verbal only that their history is so obscure. It has been asserted that among the barbarian races the bare conception of a will was unknown; that we must search for the infancy of testamentary dispositions in the early Roman law. Indeed, until the ecclesiastical power assumed the prerogative of intervening at every break in the succession of the family, wills did not come into vogue in the West. But Mr. Petrie's papyrus seems to show that the system of settlement or disposition by deed or will was long antecedently practised in the East.—*Irish Law Times*, from the *Standard*.

The Editor's Comments

Current Topics of Interest to Lawyers.



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Edited by Asa W. Russell

Death and Sociology.

ALTHOUGH agitation for the abolition of the death penalty," says the Boston Transcript, "continues year after year in a number of states in this country, from time to time there emanate suggestions from sociologists, more or less eminent, that it be more extensively employed not merely as a penalty, but as a means of ridding society of its burdens and its waste. One of the latest advocates of this plan is Judge Amidon, of the United States district court for North Dakota. He has openly recommended the painless execution of pro-

fessional criminals and the hopelessly insane. He is not the first modern jurist of standing to express views of that general character. Cold blooded as the proposition seems, those who have advanced it have generally been regarded as merciful men even in their judicial capacity. Certain physicians also, of high professional standing, have taken similar ground."

"An habitual, incorrigible enemy of society should be solemnly adjudged to be put to death," said Judge George C. Holt, of the United States district court of New York, in an address before the Wisconsin State Bar Association. Continuing, Judge Holt said: "I would give him a fair trial. I would require proof that he had been an habitual criminal for a long term of years. I would give him all opportunity to make a full defense, and if finally it were established by clear proof that the man was one of those—numbers of whom exist in modern society—whose nature has been degraded by a life of undeviating wickedness into that of a wild beast, incapable of any substantial improvement or alteration, such a man, in my opinion, should be solemnly adjudged to be put to death. But if, in view of the squeamish sentimentality of the age, such a course be deemed impracticable, I should shut him up for life where he could do no more evil to society."

Judge Holt, comments the *Terre Haute Times*, may consider it "squeamish sentimentality" because society is not willing to begin a ruthless killing of habitual criminals, but the opinion of the most learned penologists of the world is against the jurist. Society is now beginning to learn, and to admit, that criminality and degeneracy are often the results of an undesired, overworked, poorly housed, or alcoholized, and sometimes diseased, parentage. Since the habitual criminal was condemned at birth in many cases, thoughtful and kindly people op-

pose such drastic action as that proposed by Judge Holt. The argument in favor of the proposition seems to be, says the Transcript, that so few professional criminals reform that the chances of such a result are hardly worth considering, and that in the case of the hopelessly insane it would be a mercy to put them out of their misery. These may be premises not easy to disprove; yet it sometimes happens that the apparently totally depraved man does develop a conscience, and becomes a useful citizen, and those pronounced hopelessly insane or hopelessly afflicted with any other malady do sometimes confound the experts, and return to the normal activities and pleasures of life. Only that infallibility of judgment which will probably never be attained would warrant society in even considering this proposed remedy for its ills and burdens.

Such an extreme suggestion can hardly be regarded as progressive. The American Indians employed a somewhat similar method of ridding their ranks of the useless and burdensome members, either by desertion or in some cases by the tomahawk. While the economic value of such a disposition of social wastrel might be apparent, the moral effect would be disastrous.

We cannot ignore the brotherhood of man, which is a profoundly true principle, in spite of the widespread growth of degeneracy. None of us can say with Cain, "Am I my brother's keeper?" We have a moral duty cast upon us to help the weak, the fallen, and even the depraved. Indeed, the adoption of views like those of Judge Amidon or Judge Holt would probably end in sapping civilization itself and bringing about a recrudescence of barbarism.

Leading Lawyers for Penniless Prisoners.

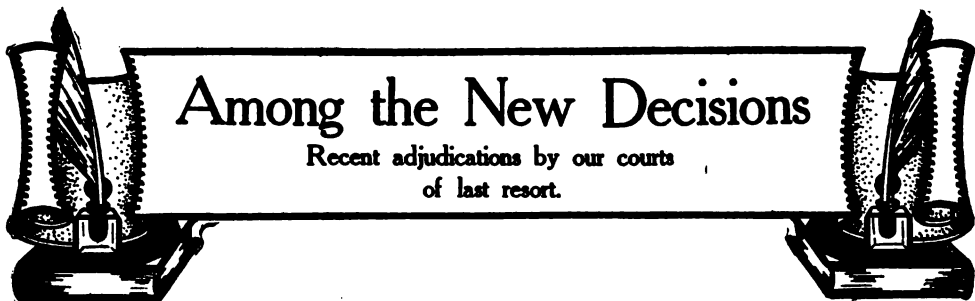
JUDGE Scanlan, presiding over a criminal court in Chicago, has invented a new method of assigning lawyers to defend persons arraigned before him who have no money with which to retain counsel of their own choosing. Hitherto it has been the custom to assign to their defense inexperienced barristers of little practice. "The young lawyers," as one Chicago newspaper puts it, "got the experience, while their clients usually got an indeterminate sentence to Joliet."

Judge Scanlan's idea appears to be that no lawyer, however prominent or busy, should be exempt from the necessity of devoting his talents to the defense of destitute persons; and the plan he has adopted in making assignments is to take the Chicago lawyers' directory, open it at random, and select the name of the first prominent lawyer he notices. On his first trial of this method he named four of the best known practitioners in the city to give their time and legal attainments to the defense of indigent clients.

We assume that the lawyers so chosen will accept their assignments good naturedly and render their unexpected clients the best service of which they are capable. A year or two ago certain eminent lawyers in New York set an excellent example by volunteering for appointments to such cases, but such examples are very rare.

"By all means," observed the Record-Herald, "let competent and capable lawyers be called upon occasionally to defend pauper prisoners. Such social service is good for their souls, good for the prisoners, and good for the criminal law."





Adverse possession—religious society.—The authorities are all to the effect that the trustees of a religious society may acquire title to property by adverse possession. This rule has been upheld, or at least recognized, in many cases. It was applied in the recent West Virginia case of *Deepwater R. Co. v. Honaker*, 66 S. E. 104, annotated in 27 L.R.A.(N.S.) 388, holding that church trustees, like other persons, may, under a deed as color of title, acquire good title to land by adverse possession, though the deed be the deed of a married woman, purporting to convey her separate estate, but void for want of privity examination; and they will acquire such title as the deed purports to convey.

Assignment—action for injuries.—Although the cases are not entirely harmonious as to the effect of a statute which makes a cause of action survive, to make it also assignable, yet the majority of the cases agree with the recent Mississippi case of *Wells v. Edwards Hotel & City R. Co.* 50 So. 628, also reported with full presentation of the authorities on the subject in 27 L.R.A.(N.S.) 404, holding that a cause of action for personal injuries may be assigned where by statute it would survive the death of the person injured.

Attachment—nonresident—Federal soldier—military reservation.—A question not previously passed upon by the courts was presented for adjudication in the recent Virginia case of *Phoebus v. Byrum*, 67 S. E. 349, 27 L.R.A.(N.S.) 436, holding that a nonresident who, as an enlisted soldier of the United States, is stationed upon a tract of land which has been secured by the Federal government within a state for military purposes, does not become a citizen of such state, so as to defeat the right of a creditor to issue an

attachment against him as a nonresident, although state process may be served within the reservation.

Attorney—lien—percentage of recovery.—That no equitable lien upon the fund arises in favor of an attorney who undertakes to protect his client's interest under a will, for a percentage of the value of the property recovered, is determined in *De Winter v. Thomas*, 34 App. D. C. 80, annotated in 27 L.R.A.(N.S.) 634.

The distinction made in *De Winter v. Thomas* seems to be that if the agreement is for a certain fee or percentage to be paid out of the fund recovered, a lien is created; while if it is merely for a sum equal to a certain percentage of the fund recovered, or for a certain amount in case of recovery, the contract is merely personal between the attorney and client, and no lien on the fund recovered is created. That this distinction is extremely shadowy when applied to actual cases will become apparent upon examination of the cases of *Trist v. Child* (*Burke v. Child*) 21 Wall. 441, 22 L. ed. 623, and *Ingersoll v. Coram*, 211 U. S. 335, 53 L. ed. 208, 29 Sup. Ct. Rep. 92, affirming 127 Fed. 418, which are set out quite fully in *De Winter v. Thomas*.

Bigamy—belief in termination of former marriage—defense.—In a prosecution for bigamy, when it appears that the first wife is still living, it is held erroneous in *Baker v. State*, 86 Neb. 775, 126 N. W. 300, 27 L.R.A.(N.S.) 1097, to exclude evidence offered by defendant tending to show that, prior to his second marriage, he was credibly informed that his first wife had obtained a divorce, and that he had sufficient reason to believe and did believe the information so received, and relied thereon in good faith.

While the courts are agreed that a mis-

take of law is no defense, they differ in opinion as to whether a mistake of fact may be considered as a defense. The point upon which the answer to the latter question must turn is whether an actual intent to violate the law is an element of the crime of bigamy. Since the statutes defining the offense do not ordinarily, if ever, contain any reference to the mental element, the legislative intention is left to deduction, thereby occasioning the differences of opinion which exist.

Carriers—free transportation—stockholders' meetings.—An interesting question not previously before the courts is determined in *Emerson v. Boston & Maine R. Co.* 75 N. H. 427, 27 L.R.A.(N.S.) 331, 75 Atl. 529, holding that transportation of stockholders of a railroad company to and from their annual meetings, without charge, in accordance with the provisions of a lease of the road, is not free, within the meaning of a statute enacted after the execution of the lease, forbidding, under penalty, railroad companies to give free transportation.

Criminal law—inspection of minutes of grand jury.—A person charged with crime is held in *State v. Rhoads*, 81 Ohio St. 397, 91 N. E. 186, not entitled, before or at the time of trial, to the minutes of the evidence taken before the grand jury, on which the indictment was found against him, nor to an inspection of a transcript of such evidence; and it is error for the court to order the prosecuting attorney to deliver said minutes, or a transcript of said evidence so taken, to the defendant or his counsel, or to order the prosecuting attorney to permit either of them to make an inspection thereof.

As appears by the note which accompanies this case, in 27 L.R.A.(N.S.) 558, none of the cases upon this question appear to have gone to the extent of holding that the trial court committed error in refusing inspection. On the other hand, no appellate court appears to have been called upon to go to the other extreme and hold, as in the above reported case, that it was error for the trial court to permit inspection. And while the courts have not always agreed as to what particular facts must be established by an

accused before an inspection should be granted, it seems safe to say that none of them have positively asserted that the right should always be denied no matter what the circumstances.

A careful reading of the opinion in the reported case discloses that it was merely held that it was error to grant defendant's motion, in order that the inspection might be made use of on the trial, upon his plea of not guilty.

Municipal corporations—physicians—forbidding advertisement.—That a municipal corporation cannot, under charter authority to regulate doctors and provide for the general welfare, forbid the publication of advertisements of relief for venereal and private diseases, is held in the recent Missouri case of *St. Louis v. King*, 126 S. W. 495, 27 L.R.A.(N.S.) 608, which seems to be a case of first impression.

Municipal corporation—sidewalk—roller skating.—The liability of a municipality for an injury to a child using roller skates on the sidewalk was considered, apparently for the first time, in *Collins v. Philadelphia*, 227 Pa. 121, 27 L.R.A.(N.S.) 909, 75 Atl. 1028, holding that while a municipal corporation is under no obligation to keep its sidewalks safe for roller skating, yet the fact that a child was engaged in roller skating when injured by catching its foot in a hole in a sidewalk will not prevent its holding the municipality liable for the injury, if the hole was of such a size and so located as to render the walk unsafe for pedestrians, and had existed for such a length of time as to charge the municipality with notice of it.

Office—county treasurer—eligibility of woman.—There is considerable conflict among the authorities as to the right of women to hold office, and there is a marked tendency in the modern statutes to enlarge the rights of women in this respect.

In the recent Nebraska case of *State ex rel. Jordan v. Quible*, 125 N. W. 619, it was contended that, to be eligible to hold the office of county treasurer, the person must be a qualified elector, but the court held that, as neither the Consti-

tution nor the statutes declared that women were ineligible to hold the office of county treasurer, and as there were no constitutional or statutory provisions inconsistent with their right to hold the office, the court would follow the common law, which it declared permitted women to hold offices administrative in character, the duties of which they were competent to discharge.

The report of this case in 27 L.R.A. (N.S.) 531, is accompanied by a note discussing the recent cases upon the right of women to hold office, the earlier decisions having been presented in a note to the case of *State ex rel. Crow v. Hostetter*, 38 L.R.A. 208.

Poor—medical relief—possession of resources.—The right to use public funds to relieve persons not entirely without means of their own is considered in *Coffeen v. Preble*, 142 Wis. 183, 125 N. W. 954, annotated in 27 L.R.A. (N.S.) 1079, holding that the jury may find that a town may rightfully furnish medical aid to a family all of whom are bedridden with typhoid fever, under a statute permitting it to relieve all poor and indigent persons whenever they shall stand in need thereof, although the family owns a slight equity in a small piece of property, and has some credit at a grocery, and a few dollars in money.

"Whether the person is entitled to relief," observes the court, "must depend upon the particular facts of the case. The comparative lack of property, the severity of the affliction, the helplessness of the person applying for relief, the necessity for immediate action, and the availability of his property for conversion into cash or as a basis for credit, as well as the situation of the afflicted with respect to prosperous and willing friends and relatives,—are all to be considered."

Taxes—inspection of private books.—The question whether a statutory provision for the inspection by a taxing officer of private books and papers violates the constitutional enactment against self-incrimination was presented, apparently for the first time, in *People ex rel. Ferguson v. Reardon*, 197 N. Y. 236, 90 N. E. 829,

27 L.R.A. (N.S.) 141, holding that the legislature cannot require a stockbroker to permit an examination of his private books and papers to enable a tax officer to determine whether or not a record which he is, under penalty, required to keep, of stock transfers to furnish evidence for their taxation, has been correctly kept, where the Constitution forbids compelling one in a criminal case to be a witness against himself.

Wharf—injury to—liability of shipowner.—There appears to be little authority upon the question of the liability for injury done to a wharf by a vessel lying thereat during a storm. The few cases which have discussed the question are collated in a note appended in 27 L.R.A. (N.S.) 312, to the case of *Vincent v. Lake Erie Transportation Co.*, also reported in 109 Minn. 456, 124 N. W. 221, holding that where, under stress of weather, a master, for the purpose of preserving his vessel, maintains her moorings to a dock after the full discharge of the vessel's cargo, and the dock is damaged by the striking and pounding of the vessel, the dock owner may recover from the shipowner for the injury sustained, although prudent seamanship required the master to follow the course pursued.

Wills—lost or destroyed—probate.—The cases are not harmonious upon the question whether part of a lost or destroyed will can be admitted to probate, or whether there must be complete proof of all its contents. In some states there are statutes permitting and regulating the proof of lost wills, which require the whole will to be established before it can be admitted to probate; of course, in these states, proof of a portion only would be sufficient.

The majority of the cases sustain the doctrine announced in *Re Patterson*, 155 Cal. 626, 102 Pac. 941, also reported with note collating the earlier decisions, in 26 L.R.A. (N.S.) 654, holding that provisions of a destroyed will which was clearly and distinctly proven by the requisite number of witnesses cannot be denied probate merely because other provisions of the will cannot be established, if they would be entirely unaffected by the

latter provisions, where the statute provides that no will shall be proved as a lost or destroyed will unless its provisions are clearly and distinctly proved by at least two credible witnesses.

Will—joint and mutual—revocation.—There is much confusion and apparent conflict among the cases upon the question of the revocability of a mutual or conjoint will by one of the makers after the death, or without the consent, of the other. The general principle, however, seems to be that such an instrument, as a testamentary instrument, may be revoked by either maker, so far as his property is concerned, without the consent of the other, and therefore an express or implied covenant against revocation will not prevent the probate of a later will executed by one of the parties; but a court of equity may in a proper case give effect to the instrument as a contract, in the same way that equity may give practical effect to an agreement to make, or not revoke, an individual will. This distinction serves in a large measure to reconcile apparently conflicting cases.

The recent case of *Frazier v. Patterson*, 243 Ill. 80, 90 N. E. 216, annotated in 27 L.R.A.(N.S.) 508, declares that a will executed jointly by husband and wife, in which each devises his or her property to the other for life with remainder over, cannot be revoked by one after the death of the other. But while this decision lays down the proposition broadly that a mutual will cannot be revoked by the survivor, the only point which the court had to decide, to arrive at its conclusion, was that the survivor could not, by any act on his part inconsistent with the mutual will, affect or impair the rights of the remaindermen or residuary legatees.

Will—election of spouse to take against—effect.—There is no dissent from the proposition that the election of one

spouse to take, as against the will of the other, the interest which the law gives such surviving spouse in the decedent's estate, will neither render such estate intestate property, for the purpose of determining the rights of the survivor, nor affect the other testamentary dispositions made by the decedent, except as the exercise of the paramount right may cause a diminution of the remaining part of the estate.

The recent case of *Pittman v. Pittman*, 81 Kan. 643, 107 Pac. 235, annotated in 27 L.R.A.(N.S.) 602, determines that where a widow, without regard to the provisions of the will of her deceased husband, elects to take under the law of descents and distributions, such election does not render the will inoperative. As between other persons, the will will be enforced as nearly in accordance with the intention of the testator as it can be.

Witnesses—privilege—physician's statement to patient.—Conceding that statements or communications made by a patient to his physician are confidential and privileged, it would seem that any statement of fact made by the physician to the patient, based upon such privileged communications, or based upon information acquired while acting in the confidential relation of physician, would be equally privileged.

This view is confirmed by the recent Nebraska case of *Bryant v. Modern Woodmen*, 125 N. W. 621, holding that a statement of fact or opinion expressed by a physician to a patient in the course of a professional visit, based upon a relation of facts by the patient, or upon a physical examination by the physician, is a part of the same transaction, and is as much privileged as the facts or statements of the patient on which it is based.

The case law bearing on the question is collated in a note accompanying the report of the case, in 27 L.R.A.(N.S.) 326.

The Readers' Comments

Who shall decide when doctors disagree,
And soundest casuists doubt, like you and me.—Pope.

[Note.—The discussion of Mr. Roosevelt's criticism of the United States Supreme Court, which was invited in the October number of Case and Comment and which closes with this issue, has attracted wide-spread attention among the legal profession. Lawyers of our eastern and western seaboard and from many of the interior states have expressed their views in a number of pointed and able articles. Our readers will find many excellent things well-said in this series of communications, and we submit them as meriting careful perusal. Several other interesting articles were received too late to be available.—Ed.]

Mr. Coles of Indiana says Citizens may Discuss Court Decisions.

Editor CASE AND COMMENT:—

The idea advanced by Colonel Roosevelt before the Colorado legislature on August 29th is stated as follows (quoting from October CASE AND COMMENT): "I am anxious that the nation and the state shall each exercise its legitimate powers to the fullest degree. When necessary they should work together, but above all they should not leave a neutral ground in which neither state nor nation can exercise authority, and which would become a place of refuge for men who wish to act against the interests of the community as a whole."

He then cites two decisions of the Supreme Court, which (in his opinion) creates such neutral ground, or "no man's land," where neither state nor nation has jurisdiction to control the operations of "men who wish to act against the interests of the community as a whole."

The cases referred to are the Knight sugar trust case and the New York bakeshop case. A summary of the opinions would too greatly extend this article, but it is presumed that the critics of Colonel Roosevelt will admit that the two decisions at least tend to produce the effect claimed, as I understand they do not deny it.

If the desire expressed by Colonel Roosevelt is not wrong either morally, legally, or politically, and the two decisions tend to establish a zone where men may mass wealth and exploit the whole people to the full extent of their ability for their extortionate gain, without the power of either state or nation to correct the abuse, it follows that either one or both of the decisions are wrong, and ought to be overruled either by the court or a constitutional amendment.

The Dred Scott decision was overruled by amendment of the United States Constitution.

Courts of appeal sometimes overrule their own decisions when they are convinced that they are wrong, and why has not a citizen of the United States a right to try and convince the Supreme Court that its decision is wrong, using any honorable and proper means in his power for that purpose, without being subject to the charge of "unwarranted assumption" and attacking the court?

When a court overrules its own former decision, the same logic as used by some of the critics would justify a charge that it is

guilty of an unwarranted assumption and an unjustifiable attack on itself.

"A question is never settled until it is decided right." It is not only the privilege, but the duty of every American citizen, to do all in his power to have questions affecting the whole people decided right; and epithets do not amount to an averment of facts, nor a logical argument proving such efforts are wrong to an "attack" on the court.

JOHN B. COLES.

Rising Sun, Ind.

Mr. Seiders of Toledo Denies the Existence of a Neutral Zone.

Editor CASE AND COMMENT:—

The query as to whether Mr. Roosevelt's criticism of the United States Supreme Court was justifiable brings forward a somewhat unique situation. His address before the Colorado legislature has been discussed pro and con in the newspapers, magazines, legal periodicals, in the clubs, and on the streets. But no one seems to have thought it worth while to ascertain whether Mr. Roosevelt was right in stating that, in deciding the Knight sugar trust case and the New York bakeshop case, the Supreme Court had left "a neutral ground in which neither state nor nation can exercise authority."

The case of United States v. E. C. Knight Co. 156 U. S. 1, 39 L. ed. 325, 15 Sup. Ct. Rep. 249, was decided January 21, 1895. In that case the American Sugar Refining Company, for the purpose of obtaining a monopoly of the manufacture of refined sugar, purchased the stock in five Philadelphia sugar refining companies, issuing its own stock in payment. The United States brought action against all the companies concerned, for the dissolution of this "combination," as being in restraint of trade under the Sherman anti-trust law.

The Supreme Court held that while the acts of the American Sugar Refining Company were for the purpose of creating a monopoly, it was a monopoly of manufacture, and not of commerce. To give a few quotations:

"The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce."

"Congress did not attempt thereby [act of July 2, 1890], to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by

the states or the citizens of the states in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanctioned or permitted."

"That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the state."

It will be seen that there was no creation of a "neutral ground." It was expressly held that as the acts in question did not affect commerce, but were purely a monopoly, the correction must come by way of police regulation through the state.

Let us now see what next occurred.

On February 27, 1905, the same court decided the case of *National Cotton Oil Co. v. Texas*, 197 U. S. 115, 49 L. ed. 689, 25 Sup. Ct. Rep. 379. In that case several New Jersey corporations had formed a combination with the Taylor Cotton Oil Works, a Texas corporation, for the purpose of regulating and controlling the price of cotton seed throughout the state of Texas, thereby substantially creating a monopoly in that state. The state of Texas instituted a suit under its anti-trust laws to forfeit the license of the foreign corporations to do business in that state, in which it succeeded, and the action of the state court came for review before the United States Supreme Court, and the judgment of the state court was sustained on the authority of the *Knight sugar trust case*.

A still more interesting case is that of *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86, 53 L. ed. 417, 29 Sup. Ct. Rep. 220, decided January 18, 1909. In this case the Standard Oil Company had purchased a majority of the stock in the Waters-Pierce Oil Company and then entered into an arrangement by which a virtual monopoly was had of the oil business in the state of Texas, contrary to its anti-trust and anti-monopoly laws. It will be noted that the method here pursued was similar to that which had been pursued by the American Sugar Refining Company in the *Knight Case*; only that in the latter case no arrangement had been formed with the Philadelphia companies, nor was any state law violated, or, at least, none was sought to be enforced.

The state of Texas brought suit to recover the penalties, under the statute, and for a forfeiture of the company's right to do business in that state, and the trial resulted in a verdict against the company of \$1,623,500, and that its license should be forfeited. The state courts affirming this verdict and the judgment thereon, the case came to the United States Supreme Court, and the action of the state was there affirmed. This case squarely sustained the state in creating and enforcing a police regulation against monopoly.

In the meantime, the Supreme Court of the United States decided the cases of *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 44 L. ed. 136, 20 Sup. Ct. Rep. 96, and

Northern Securities Co. v. United States, 193 U. S. 197, 48 L. ed. 679, 24 Sup. Ct. Rep. 436, in both of which there were combinations in restraint of trade and to obtain a monopoly through the control of interstate commerce.

It will therefore be seen that our Supreme Court has not left "a neutral ground in which neither state nor nation can exercise authority," but, on the contrary, taking the *Knight sugar trust case* as a basis for its acts, any state can enact a law, as has the state of Texas, against monopoly. Therefore, between such acts and the Sherman anti-trust law, the ground is completely covered.

As to the so-called New York bakeshop case (*Lochner v. New York*, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 A. & E. Ann. Cas. 1133), the Supreme Court simply decided that any law prohibiting persons *sui juris* from making contracts to work for longer than ten hours a day was an interference with the constitutional right of liberty of contract, it not appearing that the work of a baker was such as needed any special protection in the way of limited hours.

To say that the law was held unconstitutional "because, forsooth, the men must not be deprived of their liberty to work under *unhygienic conditions*," is an inexcusable declaration and wilfully misleading. The law in question has a number of sections, providing for "drainage and plumbing of buildings and rooms occupied by bakeries;" for "requirements as to rooms, furniture, utensils, and manufactured products;" for "wash rooms and closets, sleeping places;" for "inspection of bakeries;" and for "notice requiring alterations;"—all of which are in full force and unquestioned. The requirements are of such a strict nature that their enforcement will make "unhygienic conditions" impossible. In holding the ten-hour section unconstitutional the Supreme Court squarely said that if to work ten hours in a bakery was, by reason of the length of time, dangerous to the health any more than it is in any other occupation, then there would be a reason for the act, and its constitutionality unquestioned. But such is not the case, as we all know. The decision is expressly limited to persons *sui juris*, so that the right to enact a similar law as to those who have not arrived at the age of majority is unquestioned. To say that the "wrong undoubtedly exists" is an unwarranted assumption, and the court carefully points out that to work ten hours in a bakery is not any more dangerous to health than to work ten hours in an office, etc. Ten hours' work may be fatiguing, but it is not dangerous, and there is no reason why the American people should be deprived of the constitutional protection of liberty of contract simply because the New York bakers want shorter hours.

A perusal of the cases above cited will disclose that Mr. Roosevelt's remarks were founded on ignorance and false assumption, and that his criticisms were, therefore, unjustifiable and uncalled for from any point of view, and, when you take into account the possible effect, vicious.

CHARLES A. SEIDERS,
Toledo, Ohio.

Mr. Beecher of Detroit Declares Reasonable Criticism Justifiable.

Editor CASE AND COMMENT:—

The Supreme Court of the United States is the greatest legal tribunal in the country, and its integrity and ability stand unquestioned; yet its decisions and the reasons for them, in instances, are not above criticism, for history furnishes evidence where cases have been criticized by the popular mind. In most instances these criticisms have arisen when the decision was rendered by a divided court. The very fact that a court is divided in its opinion shows that there is a difference of opinion as to what the law is on the subject; and any decision of a court, concurred in by less than a majority of the judges, has not the force of a precedent and therefore is not the law in the sense of establishing a definite legal principle, although it may be effective for the time being, and it is not infrequent that the principle enunciated in a dissenting opinion becomes the law in a later case.

The rule stands unquestioned, that due respect for the decisions of the body to whom the people have intrusted the power to interpret the primary authority of our government should be had by the people, "not on the mere ground of courtesy or conventional respect, but on the very solid and significant grounds of policy and of law." This principle, however, must be reasonably interpreted; for the court in its constitutional authority not infrequently has to pass upon or decide questions which affect intimately, seriously, and vitally the interests of every member of the nation, and it is in such cases that its judgment may give rise to criticism by not meeting the trend and spirit of the age. The spirit of the law, like that of society, is progressive, and all *new conditions* the law is capable of meeting; for the growth and expansion of the law is a continuous struggle between the general principles of law and the standard of reasonableness and common sense of society by which the new conditions affecting the people at large or the weak, in particular, in an advancing civilization, can be satisfied; for it has been well said that the law is founded on a comparatively few, broad, general principles of justice, fitness, and expediency, which are generally comprehensive enough to adapt and modify themselves to new institutions and conditions of society, *new modes of commerce*, *new usages and practices*, as the progress in the advancement of civilization may require. The modification of a principle to meet the *new conditions*, *modes of commerce*, *new usages and practices* which, under the general principle, would be legal and yet a menace to the general welfare of the people, is most desirable in the interest of progress.

In a case, like *Lochner v. New York*, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 A. & E. Ann. Cas. 1133, where, on the one hand, there is the police power,—a very indefinite power,—while, on the other hand, there is the constitutional safeguard,—a very gen-

eral principle,—it is merely a question of inclusion and exclusion, and the cogent elements rest in the reasons given in the decision and whether they meet the conditions as they obtain. The modern spirit of the law to meet the new conditions is well expressed in *Comm. v. Hamilton Mfg. Co.* 120 Mass. 383, where the court said: "The law, therefore, violates no contract with the defendant, and the only other question is whether it is in violation of any right reserved under the Constitution to the individual citizen. Upon this question, there seems to be no room for debate. It does not forbid any person, firm, or corporation from employing as many persons or as much labor as such person, firm, or corporation may desire; nor does it forbid any person to work as many hours a day or a week as he chooses. It merely provides that in an employment, which the legislature has evidently deemed to some extent dangerous to health, no person shall be engaged in labor more than ten hours a day or sixty hours a week. There can be no doubt that such legislation may be maintained either as a health or police regulation, if it were necessary to resort to either of those sources for power. This principle has been so frequently recognized in the commonwealth that reference to the decisions is unnecessary." This decision is also within the spirit of the other rule of law relating to contracts, which protects the weak against the strong.

The rights the people reserved to themselves, as voiced in the Bill of Rights, are to be reasonably interpreted, and if the people or, more particularly, those who have an inclination born of selfishness and greed to violate them, would exercise their *moral intelligence*, and *live up to them* in their daily conduct, no laws would be necessary to curtail the fundamental reserved rights. Many judges are overzealous in safeguarding these rights, to the detriment of progress, when the changing and varying conditions demand a limitation of these constitutional guaranties. Judges are human, and many of them hate to give up the old for the new; in other words, they are not cognizant of the spirit of progress as manifested in the times and in the law. In the fact of these principles and the existing economic and social conditions, Mr. Roosevelt is justified in his criticism. A reasonable criticism is justifiable where a court fails to be progressive in declaring the law. Some years ago when Mr. J. J. Hill said: "Decision or no decision, the men who own this stock will do with it as they please. The courts decide a great many things about which they know nothing. This is one of them. No court can run our property." Nobody seemed to find much fault with the tirade, not even Mr. Alton B. Parker, but how different when Mr. Roosevelt makes a legitimate criticism. It is well that under the existing economic political and social conditions there is one man, whose motives are sincere, who champions the cause of the people as against the interests, and voices the sentiments of the people.

F. A. BEECHER.

Mr. Napton of Montana Says This is a Government of Laws—Not of Men.

Editor CASE AND COMMENT:—

You ask in the last CASE AND COMMENT the opinions of your readers upon the expression of Mr. Roosevelt's views as they appear on page 229, concerning two opinions of the Supreme Court of the United States.

I give my views with much hesitancy, since I know how difficult it is, in limited space, to express views concerning these questions, which will not be erroneous. Kent, Story, Tucker, or Benjamin might do so, but for one not used to writing on constitutional questions, the task is difficult, if not impossible; it appears to be the latter in Mr. Roosevelt's case.

He says: "I am anxious that the nation and the state shall each exercise its legitimate powers to the fullest degree."

"Nation" and "national" are not to be found in the Constitution of the United States. At an early period of the debates in the convention which framed this instrument, the committee of the whole reported this resolution: "That a national government ought to be established." On the 20th day of June, Mr. Ellsworth moved to amend it so as to read: "That the government of the United States ought to consist," etc. This motion was agreed to *nem. con.*, "which dropped," as Mr. Ellsworth observed, "The word 'national' and retained the proper title 'the United States.'" Votes were taken by which the word "national" was struck out wherever it occurred in the report of the committee of the whole. But it appears that the word "national" in the draft of the Constitution reported August 6th was stricken out of every clause in the Constitution reported, and never reappeared. So that the words "nation" and "national" as applicable to the Federal system and government are not to be found in the Constitution.

I take the above from Tucker's work on the Constitution of the United States,—the truest exposition of that instrument that has been written.

The former President should have said, in my view of the matter: "I am anxious that the United States of America and each state shall exercise, the former its constitutional powers, and the latter its reserved powers, to the fullest extent."

The misuse of this term has caused a very erroneous popular conception of the true nature of our Federal system. Most of our foreign population—and they are coming in by the millions—have an idea that the United States exercises all the powers formerly exercised by the King of Prussia or at present by the Shah of Persia; and a government of laws, and not of men, is absolutely foreign to their conceptions; and I think it is true, although I hope I am in error, that a large majority of our voting population think that the government is a government "of the people, for the people, and by the people."

It appears to me that all women, all tyrants, and Mr. Roosevelt conceive of government as

a purely personal affair; and that this conception, instead of being "progressive," is about the oldest Old Man of the Sea with which the human race is acquainted.

Mr. Roosevelt objects to any neutral ground where neither state nor nation can exercise authority, losing sight of the fact that no such neutral ground can possibly exist under the Constitution. He calls the decision in the Knight sugar trust case one which renders it exceedingly difficult for the people to devise any methods of controlling and regulating the business use of great capital in interstate commerce,—a decision "nominally against national rights, but really against popular rights." The Supreme Court is much like the Pope in matters of doctrine,—it is infallible; its decisions may be "against law" as law is understood by one or the other of the parties litigant, but as soon as made, it becomes the law.

It is, of course, the right of anyone to criticize a decision of that court or of any other court. As to its being a contempt of court to criticize a past decision of this court such a conception is quite consistent with the ideas of these people,—that the President is Czar, the Supreme Court a body of men unrestrained in power, the Congress another Parliament of England.

Mr. Roosevelt mentions these cases "merely to illustrate the need of having a truly national system of government, under which the people can deal effectively with all problems, meeting those that affect the people as a whole by affirmative Federal action, and those that affect merely the people of one locality by affirmative state action."

The most interesting views CASE AND COMMENT could publish upon these constitutional remarks by the "Rough Rider" would be the views of President Taft concerning them.

Lincoln, if memory serves us right, also criticized a decision of the Supreme Court. The exercise by the United States of power to prevent slaves from being taken into the territory of the Louisiana Purchase in violation of the decision of the Supreme Court was or would have been an act of anarchy; and neither one so high as our distinguished former President, nor the lowest emigrant who comes to our shores, fleeing from the unjust governments of his home, should ever forget that our American idea of government is a government of laws,—not of men.

Polson, Mont.

H. P. NAPTON.

Mr. Dyer of Minneapolis Believes Decisions Criticised Will Eventually Be Set Aside.

Editor CASE AND COMMENT:—

In an address at Denver, Colorado, delivered before the Colorado legislature on August 29th, Mr. Theodore Roosevelt made a severe criticism against decisions of the United States Supreme Court in two cases, namely: United States v. E. C. Knight Co. and Lochner v. New York. The first-named case is

referred to in his address as the Knight Sugar Trust case, and the second case is referred to as the New York bakeshop case.

The question has been raised as to whether Mr. Roosevelt was justified in making such criticisms against the decisions of the court. Some have even gone so far as to say that he was in contempt of court in openly voicing his criticism at such time and place.

I do not understand how anyone can make that statement, as I see no way in which Mr. Roosevelt can be found in contempt of court, either direct or constructive. If Mr. Roosevelt had occupied a government position at the time of making such criticisms, or if he were a practising attorney, and as such had been the attorney on one side to present the case to the Supreme Court, such a decision as to his being in contempt of court would bear weight. Not that I think that because of his having been President he is thereby entitled to openly, or in any other way, criticize the decisions of our courts. It is a very dangerous thing for any man to criticize a decision of any court, and especially so the decisions of the United States Supreme Court, the highest and most honored court in our country.

Were such a thing to become a common practice, it would very quickly bring about a very serious state of affairs.

That we may the better see whether such criticisms were justified, let us look briefly at the cases in question.

First: *United States v. E. C. Knight Co.*

Mr. Roosevelt says, in general: "I am anxious that the nation and the state shall each exercise its legitimate powers to the fullest degree. When necessary, they should work together, but, above all, they should not leave a neutral ground in which neither state nor nation can exercise authority, and which would become a place of refuge for men who wish to act against the interests of the community as a whole."

In the decision handed down by the Supreme Court in this case, it has rendered it, in the future, exceedingly difficult for the nation to effectively control the uses of corporate capital in interstate business, as the nation obviously was the sole power that could exercise this control.

Mr. Roosevelt says of the decision: "It was a decision nominally against national rights, but really against public rights."

Second: *Lochner v. New York*, referred to as the New York bakeshop case.

This is a case of vast importance to every city in the United States, and the decision of the Supreme Court in this case should be read and studied by all the members of the bar, and by all citizens who are interested in public welfare.

In all large cities the baking business is, in most cases, carried on under unhygienic conditions. The ill effect of working under such conditions soon begins to tell on the people employed. For men, and in a number of cases women and girls, to be compelled to work in such unhealthful places as many of the large bakeshops of our cities are, is not

only against the welfare of the workers, but against the public welfare.

The legislature of New York passed, and the governor signed, a bill remedying these conditions in that city. It was right and proper that such action should be taken, and New York state was the only body that could deal with them; it was a matter in which the nation had no power.

Mr. Roosevelt, speaking of the decision, says: "But the Supreme Court of the United States possessed and unfortunately exercised the negative power of not permitting the abuse to be remedied. By a five to four vote they declared the action in the state of New York unconstitutional, because, forsooth, that men must not be deprived of their liberty to work under unhygienic conditions."

Many will, no doubt, say that such sentiments should never be expressed against the decision of any of our courts by any man. Such has been said in the past few weeks by many in all parts of the country. But do we mean to take the stand that if a decision of our courts in a case so vital to the public interests of our cities as this one is, and where action has been taken by the proper bodies in our state to remedy these conditions, that if such decision sets aside all such action on our part, that we shall be compelled to sit still and let such a decision rest, and the men and women and girls in our cities be compelled, year after year, to work under conditions which are in many cases unfit for any human being to work in, until sickness compels them to leave these places?

Is Mr. Roosevelt the only man who has ever taken it upon himself to openly criticize a decision of the Supreme Court of the United States? No, he is not, and that we may compare a criticism of another man with this one I will quote a few statements from that case.

I refer to the debates between Lincoln and Douglas during 1857 and 1858 relative to the Dred Scott Case. Mr. Lincoln, in speaking of the decision handed down by the United States Supreme Court in that case, says: "But we think this decision erroneous. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this."

"We offer no resistance to it. I now repeat my opposition to the decision,—I do not resist it. We abide by the decision, but we will try to reverse that decision."

"By resisting it as a political rule, I disturb no right of property, create no disorder, excite no mobs."

Now mark these words which Lincoln uses: "I believe the decision was improperly made, and I go for reversing it."

Can we find an instance where stronger or more emphatic language has been used against a decision of the Supreme Court of the United States? Is there any reason why a criticism on a decision of that court has not as much right to be made now as then? The Supreme Court at that time commanded just as much respect as it does to-day. Will we say that

such remarks made by Lincoln then placed him in contempt of court, or that he was not justified in making such statements against the decision as he did? If we say yes, then we must rightly place Mr. Roosevelt in the same place.

But before we take issue on that question, let us look at the dissenting opinion of one of the justices of the Supreme Court. I refer to the opinion of Justice Harlan, dissenting, in the *Knight Case*.

"This view of the scope of the act leaves the public, so far as national power is concerned, entirely at the mercy of combinations which arbitrarily control the prices of articles purchased to be transported from one state to another state. I cannot assent to that view. In my judgment, the general government is not placed by the Constitution in such a condition of helplessness that it must fold its arms and remain inactive while capital combines, under the name of a corporation, to destroy competition, not in one state only, but throughout the entire country."

"The doctrine of the autonomy of the states cannot be properly invoked to justify a denial of power in the national government to meet such an emergency. The common government of all the people is the only one that can adequately deal with a matter which directly and injuriously affects the entire commerce of the country, which concerns equally all the people of the Union, and which, it must be confessed, cannot be adequately controlled by any one state. Its authority should not be so weakened by construction that it cannot eradicate evils that, beyond all question, tend to defeat an object which that government is entitled, by the Constitution, to accomplish."

It seems to me that the above language of the learned justice gives the danger to which a decision as handed down in the *Knight case* will result in if allowed to stand.

Again, in the *bakeshop case* we have the opinions of three of the justices, dissenting, which shows the right which the state has to act in such matters, and after speaking of the existing conditions under which the people have to work, and reasons why they should be changed, they say:

"If such reasons exist, that ought to be the end of the case, for the state is not amenable to the judiciary, in respect to its legislative enactments, unless such enactments are plainly, palpably, beyond all question, inconsistent with the Constitution of the United States.

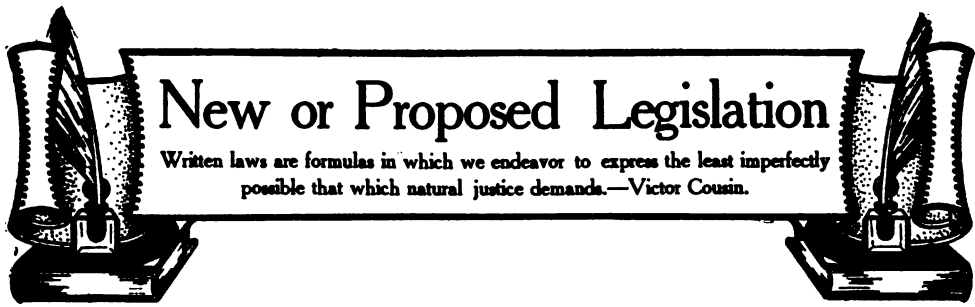
We cannot say that the state has acted without reason, nor ought we to proceed upon the theory that its action is a mere sham. Our duty, I submit, is to sustain the statute as not being in conflict with the Federal Constitution, for the reason—and such is an all-sufficient reason—it is not shown to be plainly and palpably inconsistent with that instrument. Let the state alone in the management of its purely domestic affairs, so long as it does not appear beyond all question that it has violated the Federal Constitution. This view necessarily results from the principle that the health and safety of the people of a state are primarily for the state to guard and protect."

There we have one of the strongest statements that could possibly be made as to the rights of a state to attend to matters of this kind. Are we then to sit back, and let the court overthrow all the right which the state has in a case of this kind? If this were a case that affected the state of New York alone, it would be bad, but this is a case that will be relied upon by defendants in similar cases all over the United States, and it is for that reason that such pressure should be brought to bear that the Supreme Court may see the justice of such criticism as is made, and that they will reconsider their decision and set it aside.

I think that the above statements by the learned justices who dissented to the opinion as handed down by the court give Mr. Roosevelt sufficient grounds for making the criticism he did on this case. It seems to me that the words which Mr. Roosevelt used in his message to Congress, on December 3d, 1906, when he was President, may well be applied here. At that time he said: "Just and temperate criticism, when necessary, is a safeguard against the acceptance by the people as a whole of that intemperate antagonism toward the judiciary which must be combated by every right-thinking man, and which, if it became wide-spread among people at large, would constitute a dire menace to the Republic."

After a careful study of the facts in these two cases, I cannot help but feel that Mr. Roosevelt was perfectly justified in making the criticisms which he did against the decisions of the United States Supreme Court, and I believe that the day will come when this court will set aside these decisions.
Minneapolis, Minn. GEORGE C. DYER.





Uniform Law of Wills.—We are indebted to Mr. W. O. Hart, of New Orleans, Louisiana, chairman of the committee appointed by the American Bar Association to draft a proposed uniform law of wills, for a copy of two proposed acts, the first of which has been approved by the Conference of Commissioners of Uniform State Laws, and is to be sent out to the different states with the recommendation that it be presented to the legislatures for adoption. The second act was recommitted, and the subject will be taken up at the next meeting of the Conference.

The acts are as follows:

"An Act Relative to Wills Executed without This State and To Promote Uniformity among the States in That Respect.

"Be it enacted, etc.: A last will and testament executed without this state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state; provided, said last will and testament is in writing and subscribed by the testator."

"An Act To Establish a Law Uniform with the Laws of Other States Relative to the Probate in this State of Foreign Wills.

"That any will duly admitted to probate without this state, and in the place of testator's domicile, may be duly admitted to probate and recorded in this state by duly filing an exemplified copy of said will and of the record admitting the same to probate; and such will shall then have the same force and effect as if originally proved and allowed in this state."

Wills and Succession.—Mr. Ernst Freund, professor of law in the University of Chicago, in reviewing recent legislation upon this subject in the New York Education Department Bulletin, states that "Kansas enacts (Laws of 1907, chap. 430) that in all actions to contest a will, if it shall appear that such will was written or prepared by the sole or principal beneficiary in such will, who, at the time of writing and preparing the same, was the confidential agent or legal adviser of the testator, or who occupied at the time any other position of confidence or trust to such testator, such will shall not be held to be valid unless it shall be affirmatively shown that the testator had read or knew the contents of such will, and had independent advice with reference thereto. At common law, it seems, either one of the two requirements may rebut the presumption of undue influence.

In the matter of descent and distribution the tendency to favor the surviving husband or wife continues to be noticeable. Thus New Jersey (Laws of 1908, chap. 316) changes the former law, copied from the English statute of distributions, by giving the widow the whole, instead of the half, of the personal estate, if there are no children; Idaho likewise gives the surviving spouse all, if brothers or sisters of the deceased are otherwise the nearest of kin (Laws of 1907, p. 338). California (Laws of 1907, chap. 297), after several fluctuations, reverts to the rule which allows grandchildren as well as children of deceased brothers or sisters to take by representation.

Nebraska (Laws of 1907, chap. 49), in giving the surviving spouse one third, if all the children are his or hers, and one fourth only, if some of the children of the deceased are of another mar-

riage, introduces a distinction which seems novel in American law. By the same act, Nebraska substitutes absolute estates for the life estates of dower and curtesy.

Indiana (Laws of 1907, chap. 95) and Kansas (Laws of 1907, chap. 193) debar the person who has unlawfully caused the death of the deceased, from all share in his estate. The supreme court of Kansas had refused to reach the same result by judicial legislation (72 Kan. 533).

The Abolishment of Private Seals.—The committee of the West Virginia Bar Association on judicial administration and legal reform presented the following statement in support of their recommendation that private seals be abolished: The execution of a document, by the use of the seal of a natural person, has come to us from medieval times. We may find the necessity for the ancient seal in the ignorance of letters and in the scarcity of writing appliances. It was then the highest evidence of genuineness; and the very pains and deliberation required for physical execution entailed the consequences of solemnity and estoppel attaching to the transaction.

No longer does an illiterate lord among the Crusaders need to attest, before the walls of Jerusalem, some instrument to be used in his distant fatherland, by impressing the sign blazoned on his shield and banner, to prove his act,—his *factum*.

As time has progressed, the best guaranty of authority is the personal, written signature.

The diffusion of knowledge, the practice of writing, and the present convenience for signing, have done away with every reason for the use of the crude and cumbersome device of the darker period.

Why did the legislature substitute the scroll, sometimes designated as a scrawl? Why was not the seal and its substitute abolished altogether?

The reason may be found in the general doctrine relating to deeds and sealed

instruments. Certain contracts are required to be by deed, in land matters. Bonds are necessary. Peculiar rights attached to specialties. The seal always imports consideration. Until recently it withstood the lapse of time, under the statutes of limitation, four times as long as the simple contract; and in the long ago, no paper could be taken out by a jury, unless under seal, because juries could not read, but were supposed to be familiar with the seals of the vicinage.

In *Cooper v. Rankin*, 5 Binn. 613, and *Alexander v. Jameson*, 5 Binn. 238, we find that the impression of a tooth was equivalent to stamping by a seal. Hence the attestation of a deed by William the Conqueror to one Rawdon:

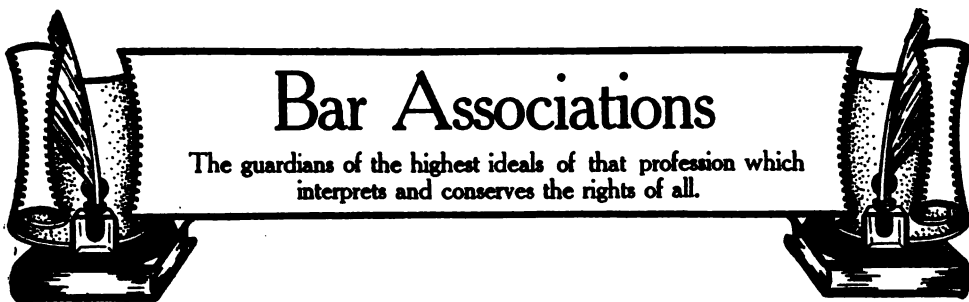
"In token that this thing is sooth,
I bite the white wax with my tooth."

The author of our scroll substitute saw that the reason of the seal no longer existed. He was willing to get rid of the wax and taper and tooth or fish's tail, or whatever figure there might be, and to put a writhing worm in its place; and so we have to-day a vermiform appendix, and we submit that the time has come for cutting it out.

Nearly all deeds of importance are now printed or typewritten. The stenographer takes from dictation, and the printer makes blanks to sell. The stenographer and the printer, as sensible people not learned in the law, do not know the force of the scroll, and sometimes omit it. It is questioned whether the typewritten word ("seal") in parentheses, now satisfies the Code; and we have seen an executed deed with only one part of the bracket used.

The present importance of the scroll is the best reason for destroying it, but it should be so done as not to disturb existing laws dependent upon it.

In present circumstances, we must save deeds and private bonds, until a new code is set forth, but meantime, we believe that all private seals should be abolished.



Proposed Commercial Code.

At the recent annual meeting of the American Bar Association, Mr. Joseph Wheless, of St. Louis, presented the following resolution, which was referred to the committee on commerce.

"Resolved by the American Bar Association, that the Federal Congress has plenary power, under the Constitution, to enact laws governing all phases of commerce between the states and with foreign nations, and incidentally to prescribe the form, terms, and conditions of commercial contracts and instruments used in carrying on such commerce, such as are now being sought to be made uniform by identical state legislation; and that such power may be exercised either by the enactment of a series of laws on the several subjects, or by a code of laws regulating all such general commercial acts and contracts; and,

"Resolved, that the American Bar Association hereby declares in favor of the enactment by the National Congress of a Federal commercial code embracing in one uniform legislative act all titles and subjects of interstate and foreign commerce, superseding thereby the conflicting regulations of the several states, tending to induce the several states to adopt the same regulation for their internal commerce, thereby securing a practical uniformity of legislation on commercial matters throughout the country, and placing United States on commercial equality in point of legislation with the enlightened commercial nations of the world."

While, to the lay mind, observes the National Civic Federation Review, there would seem to be an irreconcilable conflict between those who urge the centralization of power in the Federal govern-

ment at Washington and those who would enlarge the powers of the states, yet when the arguments of the leaders of the two schools of thought are analyzed they generally amount to a declaration that each side favors the Federal control of those subjects which are interstate, and the state control of those which are intrastate. Their disagreement relates to the disposition of those matters which Mr. Bryan has said belong in the "twilight zone" where the line of demarcation is indistinct. The vital point in this great question to-day is, "What, in the interest of public welfare, can be better controlled by the Federal government and what by the states?" When it comes to such question as taxation—especially the general property and personal tax—compensation for accidents occurring to employees in the plants, mines, and factories of the nation, regulation of quasi municipal utilities, regulation of the thousands of state banks, savings banks, trust companies, building and loan associations, life and fire insurance, good roads building, child labor, prison made goods, arbitration and mediation in industrial disputes, and hundreds of other subjects, the states alone, under our present form of government, must have control.

True, the Constitution can be amended if the people so will; and a bill was introduced by Congressman Madden, of Chicago, at the last session of Congress, authorizing the submission of an amendment to the Constitution which would confer upon Congress the power to legislate upon almost every conceivable ill to which flesh is heir—political, economic, and sociological, physical and metaphysical. There is, however, much sentiment in commercial and industrial circles to-day that, impatient of the conflicting restraints imposed upon business by the

various state laws, is naturally turning to the Federal government for relief. All of which means as is well stated by several writers in a recent issue of the *Civic Federation Review*, that unless the states are aroused to do their full duty there is a likelihood of this impatience resulting in a broad extension of Federal powers.

Sherman Anti-trust Law.

In a recent address before the Lehigh County Bar Association, Mr. Marcus S. Hottenstein, of Allentown, Pennsylvania, said in part: "Since the enactment of the anti-trust law in 1890,—twenty years ago,—according to information recently received from the Attorney General of the United States, there have been filed in the various United States courts only thirty-six bills in equity for violation of the law, and only thirty-eight indictments have been presented.

"The limited number of cases brought under the law is an index of its ineffectiveness, which has been due somewhat to the difficulty of securing evidence. In 1906, however, the United States Supreme Court slightly diminished this difficulty by holding that a corporation can be compelled to produce its books in court, even though the books contain evidence that might tend to incriminate the corporation, and also that the officials of the corporation cannot be excused from testifying, on the plea that their evidence might incriminate the corporation of which they are employees.

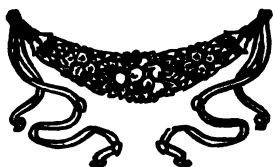
"The Sherman anti-trust law is based upon the theory that, in matters of business, competition is advantageous to society, while monopoly is detrimental. It is the only Federal law that looks to the preservation of competition in business. One of the senators of the middle West is of the opinion that, if we are to main-

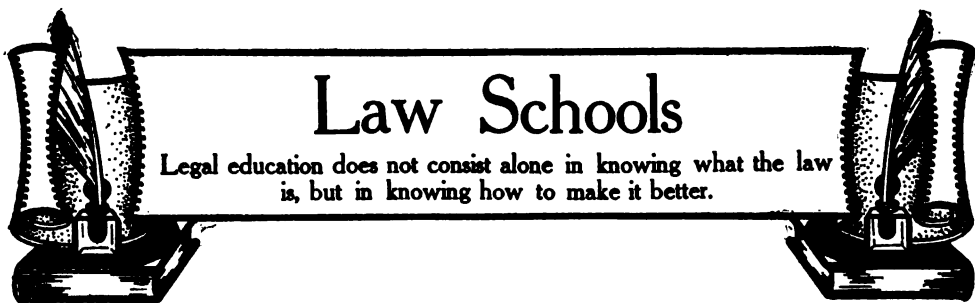
tain the competitive theory of industrial life, this law must be not only rigidly enforced, but strengthened from time to time, so that both monopoly, or any other effective form of domination, will be prevented.

"The trend during the last twenty years has been in the direction of consolidation, not away from it. Railroads and industries have been consolidated on a grand scale. The weak have fallen under the control of the strong, and to-day, under the Sherman act, we are witnessing the most momentous combinations of transportation and industrial activity.

"The problem is, indeed, not without its difficulties. The law favors keen and aggressive competition. A necessary consequence of such competition must inevitably be that one of the competitors will gradually become stronger and stronger, and the others weaker and weaker, and finally the accumulation of strength and influence on the part of the successful party may result in the annihilation of the weak competitors, and a monopoly has been created. 'The question in such cases is, Where shall the line be drawn? At what point shall a competitor be restrained from further competing, and to what extent? The iniquities of monopolies may be clearly seen, but it is not so easy to point out a way in which their creation can be prevented.

"To take from those who have acquired under our existing laws would be revolutionary, and could not be sanctioned. That so much concentration has resulted is due to our laws, and we are responsible for our laws. If the laws have been detrimental to the welfare of the public, the laws should be changed. If certain practices need to be curbed let the restrictions be imposed, firmly and with good judgment."





Leland Stanford Junior University.

The annual smoker of the Law School of Leland Stanford Junior University was held the evening of October 14. The program consisted of songs and speeches. D. E. Roth, '09, student adviser, welcomed the faculty and new students, and spoke to some extent on the honor system. Professor F. C. Woodward, head of the Law School, and E. D. Lane, assistant district attorney of San Francisco, spoke on pertinent topics. L. Craven, '09, compared the work in our school with that of Harvard, and pointed out wherein we fell short. Refreshments were then served, after which the wiser students took advantage of the opportunity to better their acquaintance with the various members of the faculty. Some hundred and fifty of the two hundred and ninety odd members of the Law School and pre-legal department were present.

Northwestern University Law School.

Professor Edwin R. Keedy, who has been abroad this summer in the interest of the American Institute of Criminal Law and Criminology, has returned to the Law School to lecture during the coming year. He presented extensive reports on "The Administration of Criminal Law in England," to the Institute, and also to President Taft, on the latter's express request.

Professor Keedy thinks that England is many years, if not a full century, ahead of us in criminal law procedure. He says he marveled at the speedy despatch of justice; all regard for mere technicalities being laid aside, and the time consumed between sentence and final judgment on appeal being, in consequence, re-

markably short. A striking feature of the criminal trials is the speedy selection of a jury, there being practically no challenging of the veniremen as a result of the prevailing practice of an agreement on the venire, between the opposing counsel, before the trial begins. The judges exercise a much greater control over the trial,—examining jurors and witnesses and curbing counsel, and thus hurrying the case along.

The report concludes with a recommendation of many reforms in our criminal procedure, some of them being along the lines laid down by President Taft.

University of Maryland Law School.

There are several changes in the faculty and courses of instruction on account of the death of the late John P. Poe and the resignation of Professor William T. Brantly. Mr. Charles J. Bonaparte, one of the most distinguished members of the bar and Attorney General of the United States in the Roosevelt administration, has become a member of the faculty and will lecture on the law of contracts in place of Mr. Brantly. Mr. William L. Marbury, a former graduate of the Law School and a member of the well-known firm of Marbury & Gossnell, will take a part of Mr. Poe's course and lecture on the law of torts.

The faculty has also determined to give to its students, in addition to its regular course by resident lecturers, special lectures from time to time by nonresident lecturers upon topics dealing with the history, development, or science of the law or special branches thereof. They have secured as the first lecturer in this special course that eminent jurist, statesman, educator, and legal author, Simeon E. Baldwin, lately chief justice of the

supreme court of errors of Connecticut, for some time professor of constitutional law and private international law in Yale, who will, on December 19 and 20, deliver two lectures on "International Private Law in the Twentieth Century."

These lectures will be open to members of the bar, and others who are interested.

Is the Lawyer a Failure?

Dean William Reynolds Vance, of George Washington University Law School, is an active participant in the movement to uplift the legal profession. At the close of a powerful address the dean expressed himself as follows: "Bluntly put, the American lawyer has proved a failure. In no other free and civilized country are the laws so ill-administered as in the United States.

"We lead the world in most of the great struggles mankind is making, but, in the administration of the law, America lags two generations behind the rest of the civilized world.

"No constructive reforms of a comprehensive kind have been seriously attempted since the days of David Dudley Field, now passed a half century and more. Our inefficient procedure in civil actions is a reproach to the nation and a disgrace to the bar, while our procedure in criminal cases, with its enormous expense, its incredible delays, and its frequent and gross miscarriages of justice, is a stench in the nostrils of the nations.

"The legal profession in America is blighted by two serious faults: The first is a low moral tone manifesting itself in its worst form in deliberate preying upon the public, legal parasitism, and in its less repulsive form in a selfish indifference to the deep public interest, with which the calling of the lawyer is affected. The second is a lack of knowledge of the law as a science, as distinguished from knowledge of the law as a craft. The great majority of our lawyers are merely craftsmen, without real knowledge of the science of the law in the sense of knowing the history of its rules and processes, the social conditions out

of which they sprang, as differing from the social conditions upon which they operate to-day.

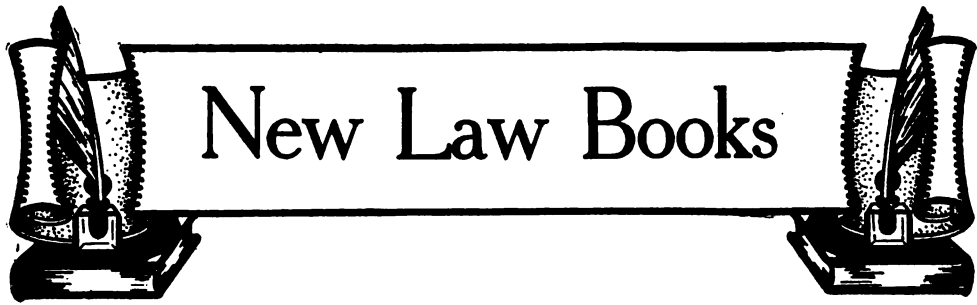
"It is the great public which must act in self-protection. Just as it has declared that those who offer their services in the practice of medicine must first be fit to render services that shall be valuable, and not dangerous, so it must require of those who hold themselves out to render services in connection with the administration of the law, that they shall be fitly trained."

International Law School at The Hague.

"Not the least of the interesting features in the twenty-sixth annual conference of the International Law Association, held in London," says the Chicago Post, "was the proposal for the establishment of a university of international law at The Hague. This subject, which is sometimes rather casually handled at the regular institutes of learning, is becoming not only more and more important as the world grows smaller, but more and more elaborate and complex. And The Hague, which seems bound to be associated for all time with the problems of international relationships, is obviously the place for a university which should specialize in this field with the same devotion and thoroughness as the great polytechnic institutions of the world in their particular fields."

Uniform Course of Legal Study.

"I would like to see a uniform law in operation throughout this country," said Judge W. O. Hart at the recent session of the American Bar Association, "requiring all law schools to have, as near as may be, a uniform course of study, a uniform time of study, and uniform requirements for graduation; and another uniform law that a law-school diploma should give to the holder no rights except to entitle him to an examination or admission to the bar by the board of examiners in the state where the law school has its domicile."



New Law Books

"Contracts in Engineering."—By James Irwin Tucker, B. S., LL. B. (McGraw-Hill Book Company, New York.) \$3.00 net.

This book deals with the interpretation and writing of engineering-commercial agreements. The writer has found his preparation for the task in some fourteen years of the study, practice, and teaching of civil engineering, supplemented by a law-school course. He has aimed especially to familiarize the engineering student with the major principles of common law relating to contracts, and has stated the principles underlying successful specification writing for the benefit of engineers engaged in the practice of their profession. With the present commercial tendency of engineering, it is believed that the contracts of business demand the modern engineer's attention about equally with those of engineering construction. The work is not intended, however, to enable the engineer to dispense with the services of legal counsel, but to enable him to co-operate efficiently with lawyers and to appreciate better the need for their services. For teaching purposes extensive lists of quiz questions and problems (about 600 in number) have been introduced. A comprehensive index adds to the value of the book for purposes of reference.

"World Corporation."—By King Camp Gillette. (The New England News Company, Boston.) \$1.00.

This unique book outlines the proposed activities of the "World Corporation" recently organized under the laws of the territory of Arizona. It is authorized to acquire, hold, or sell the bonds, stocks, or other securities of other corporations. Its capital stock is divided into common shares of the par value of \$1 each and

limited only in number to the number of dollars paid into the treasury of the Corporation for such shares. "World Corporation" aims to absorb the approved, listed, dividend-paying securities in all civilized countries approximating \$100,000,000,000, and including the leading industries and transportation systems of the world. This universal combination would bring all men into one corporate body, annihilate national distinctions, displace all governments, and establish an era of world-wide co-operation.

This stupendous scheme is worthy of the genius of Jules Verne, and doubtless he could have utilized it as the plot of a splendid story. It seems, however, to be seriously submitted, and, whatever its faults, it does not lack in imagination, initiative or daring. Perhaps it is enough to say that "World Corporation," in its process of "benevolent assimilation" of the finances, industries, and political power of the world, is apt to encounter keen competition and strenuous opposition.

"Supplement to Remington on Bankruptcy."—Vol. 3. \$6.

"The Constitutional Law of the United States."—By W. W. Willoughby. 2 vols. Canvas, \$12.

"Incorporation, Organization, and Management of General Business Corporations in Illinois."—By William Meade Fletcher. 1 vol. Buckram, \$7.50.

Cumming & Gilbert's "Court Rules of the State of New York."—New annotated edition. 1 vol. Canvas, \$4.50.

Choate's "Florida Digest."—Vol. 3. Covering vols. 40 to 57 inclusive, Florida Reports. \$12.

"Digest of the Pennsylvania County Court Reports."—Covering Vols. 1 to 35. By Albert B. Weimer. 1 vol. Buckram, \$7.50.

"Supplement to Brown's Philadelphia Digest of Ordinances, 1905-1910."—\$2.50.

"Encyclopedic Digest of Texas Reports." (Civil Cases.)—In 15 vols. Vol. 1 now ready. Buckram, \$7.50 per vol.

"Domestic Relations."—By Fletcher W. Battershall. 1 vol. Buckram, \$5.

"McAdam on Landlord and Tenant."—4th ed. By Thomas F. Keogh. 3 vols. Canvas, \$19.50. Vol. 3 contains the law and practice in summary proceedings based entirely upon the law of New York, is complete in one volume, and is sold separately. Price, \$5. Vols. 1 and 2 sold separately, \$15.

"New Mexico Corporation Laws, Rules, and Forms."—By C. F. Kanen. Buckram, \$7.

Recent Articles in Law Journals and Reviews

Animals.

"Cruelty by Acts of Omission."—74 Justice of the Peace, 505.

Appeal.

"How to Assist an Appellate Court to Arrive at Your View of a Case."—43 Chicago Legal News, 96.

Arbitration.

"A Note on the Hague Award in the Atlantic Fisheries Arbitration."—26 Law Quarterly Review, 415.

Aviation.

"Aviation and Wireless Telegraphy as Respects the Maxims and Principles of the Common Law."—71 Central Law Journal, 1.

"Federal Control Over Air Navigation."—17 Case and Comment, 288.

Ballinger.

"Ballinger as a Liability."—3 Lawyer & Banker, 334.

Bar Associations.

"The Annual Meeting of the American Bar Association."—22 Green Bag, 588.

Bible.

"The Influence of Biblical Texts upon English Law."—59 University of Pennsylvania Law Review, 15.

Blackstone.

"Sir William Blackstone."—17 Case and Comment, 271.

"The Place of Blackstone's Commentaries in Legal Literature."—17 Case and Comment, 290.

"The Merits of Blackstone's Commentaries."—22 Green Bag, 524.

Bowers.

"Lloyd Wheaton Bowers, Late Solicitor-General of the United States."—22 Green Bag, 555.

Carriers.

"The Water-Carriage of Goods Act. (9-10 Edward VII. chap. 61. Canada.)"—46 Canada Law Journal, 553.

Codes.

"Codification of English Law."—45 Law Journal, 620.

"Codification of the Law."—129 Law Times, 485.

Constitutional Law.

"Wilson *versus* the 'Wilson Doctrine.' (Powers of Congress under the Federal Constitution.)"—44 American Law Review, 641.

"The Co-operative Nature of English Sovereignty."—26 Law Quarterly Review, 349.

Corporations.

"Limitations on the Powers of Common-Law Corporations."—26 Law Quarterly Review, 320.

"The Rules which Determine the Validity or Invalidity of Voting Agreements of Corporate Stock."—44 American Law Review, 663.

"Uniform Stock-Transfer Act."—43 Chicago Legal News, 72.

"The Company Director."—45 Law Journal, 618; 129 Law Times, 484.

Courts.

"Do Courts Make or Interpret the Law?"—3 Lawyer & Banker, 327.

"The Jurisdiction of the Inns of Court over the Inns of Chancery."—26 Law Quarterly Review, 384.

Criminal Law.

"Insanity a Defense."—3 Lawyer & Banker, 362.

Drama.

"The Stage Lawyer."—17 Case and Comment, 277.

Elections.

"Aldermen and Their Votes."—74 Justice of the Peace, 481.

Electoral Commission.

"The Electoral Commission as the Arbitrator of Conflicting Claims to the Presidency."—44 American Law Review, 701.

Equity.

"Reforms Needed in United States Equity Practice."—43 Chicago Legal News, 88.

Estoppel.

"Estoppel in Insisting on Defense Where Liability has been Admitted."—71 Central Law Journal, 265.

Evidence.

"What Can Be Done to Improve the Conditions of Medical Expert Testimony?"—22 Green Bag, 529.

Extradition.

"The Right of Asylum."—45 Law Journal, 652.

Finance Act.

"The Finance (1909-10) Act, 1910."—74 Justice of the Peace, 493, 506.

"The Finance Act."—129 Law Times, 496.

"Some Requirements of the Finance Act."—45 Law Journal, 622.

Fisheries.

"State Control of Fishing Rights."—3 Lawyer & Banker, 381.

Fuller.

"Judge Putnam's Recollections of Chief Justice Fuller."—22 Green Bag, 526.

"Chief Justice Fuller."—59 University of Pennsylvania Law Review, 1.

Guaranty.

"Contracts of Guaranty and Indemnity and Credit Insurance."—44 American Law Review, 736.

Husband and Wife.

"Some Questions of Community Property Law in Washington."—3 Lawyer & Banker, 351

Infants.

"Street Trading by Children."—74 Justice of the Peace, 494.

Insurance.

"State Insurance."—45 Law Journal, 636; 129 Law Times, 502.

"Contracts of Guaranty and Indemnity and Credit Insurance."—44 American Law Review, 736.

Intoxicating Liquors.

"Can the State Prohibit the Manufacture as Well as Sale of Intoxicating Liquors."—71 Central Law Journal, 295.

Jury.

"North Carolina Bar Association Address on Trial by Jury."—43 Chicago Legal News, 70.

"Our Jury System."—45 Law Journal, 637.

"The Jury System."—129 Law Times, 507.

Justice.

"The Failure of Remedial Justice."—43 Chicago Legal News, 84.

Knox.

"The Legal Career of Senator Knox."—43 Chicago Legal News, 94.

Law.

"The Sociological Foundations of Law."—22 Green Bag, 576.

Law Libraries.

"A Needful Guide to Law Libraries."—22 Green Bag, 520.

Law Schools.

"Organization and Operation of a Law School."—2 American Law School Review, 436.

"The Honor System of Conducting Examinations in Law Schools."—2 American Law School Review, 454.

"The Honor System."—2 American Law School Review, 456.

Legal Classification.

"The Arrangement of the Law."—22 Green Bag, 499.

"The Classification of Law."—22 Green Bag, 556.

License.

"The Licensing (Consolidation) Act, 1910. (con.)"—74 Justice of the Peace, 470.

Master and Servant.

"The Employers' Liability Problem."—3 Lawyer & Banker, 325.

"Personal Injuries—Automatic Compensation."—41 National Corporation Reporter, 285.

Money Lenders.

"Money Lenders."—32 Australian Law Times, 21.

Monopoly.

"What is the Essence of the Trust Evil."—71 Central Law Journal, 256.

Mortgage.

"Suggestions for Amendments in Foreclosure Practice."—45 Law Journal, 624.

"Foreclosure Practice."—129 Law Times, 505.

Municipal Corporations.

"Municipal Corporations and Municipal Government."—129 Law Times, 488.

Negligence.

"The Modern Conception of Civil Responsibility."—44 American Law Review, 719.

Palles.

"The Right Hon. Christopher Palles, Lord Chief Baron of Exchequer in Ireland."—22 Green Bag, 497.

Partnership.

"Partnership Land."—32 Australian Law Times, 23.

Patents.

"Liability of the United States for Use of Patented Inventions; with Special Reference to the Act of Congress Entitled, 'An Act to Provide Additional Pro-

tection for Owners of Patents of the United States, and for Other Purposes,' Approved June 25, 1910."—43 Chicago Legal News, 74.

"Mechanical Equivalents in the Law of Patents."—71 Central Law Journal, 275.

Prize.

"Prize Law."—45 Law Journal, 635.

"Prize."—129 Law Times, 499.

"Hospital Ships and the Carriage of Passengers and Crews of Destroyed Prizes."—26 Law Quarterly Review, 408.

Railroads.

"Some Observations on the Rule of 'Habitual Negligence' in Railroad Fire Cases."—71 Central Law Journal, 240.

Real Property.

"Burgage Tenure in Mediæval England."—26 Law Quarterly Review, 331.

Receiving Stolen Goods.

"Found in the Possession of Such Person." II.—74 Justice of the Peace, 469.

Recorders.

"Recorders of Bristol before 1835."—129 Law Times, 503.

Schools.

"Public Schools—Religious Exercises."—41 National Corporation Reporter, 253.

Shelley's Case.

"Sir William Blackstone's Influence on the Rule in Shelley's Case."—17 Case and Comment, 284.

Sovereignty.

"A Critique of the Austinian Theory of Sovereignty."—22 Green Bag, 514.

Strikes.

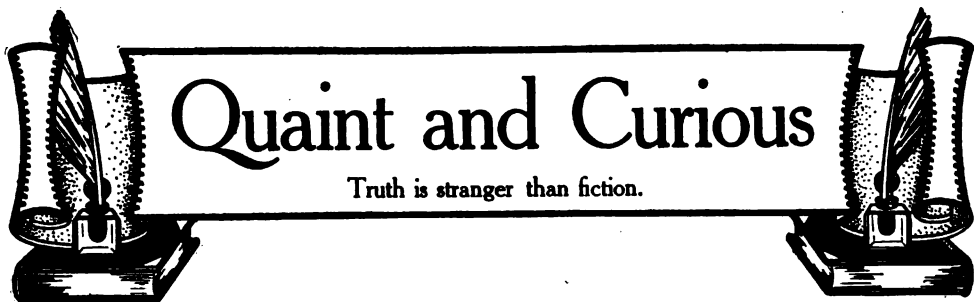
"The Newport Dock Dispute. (Liability of Public Authorities to Protect Strike Breakers from Violence.)"—26 Law Quarterly Review, 377.

Taxes.

"Local Government and Local Taxation."—129 Law Times, 493.

"Exemption from Taxation in Illinois."—43 Chicago Legal News, 91.

"Taxation and Insurance."—41 National Corporation Reporter, 321.



Quaint and Curious

Truth is stranger than fiction.

A Human Document.—It will be remembered that H. Rider Haggard, in one of his stories, has the will of a shipwrecked man of wealth tattooed upon the shoulders of a companion, and represents the unique testament as having been admitted to probate in the chancery court in England. This flight of the imagination has since been justified by the action of a miser, named Monecke, who died in Mexico. His relations were unwilling that his body should be buried, as he had tattooed his will over his chest with some red pigment, instead of using pen and ink. The court directed that this remarkable "human document" should be transcribed and the copy duly attested in the presence of witnesses. This was done, and the court gave effect to its provisions.

A Generous Testator.—Lord Pembroke gave "nothing to Lord Say, which legacy I gave him, because I know he will bestow it on the poor;" and then, after giving other equally peculiar legacies, he finished with, "Item, I give up the ghost."

A Bachelor's Will.—A wealthy bachelor, says the London Mail, to the astonishment and dismay of his relations, left a considerable sum of money to provide pensions for a limited number of single ladies over sixty. These single ladies must show evidence, in order to sustain their eligibility, that they have rejected one or more advantageous offers of marriage. Apropos to this it seems that a while ago the will of an old gentleman was proved, leaving legacies to three ladies, "because," as he wrote, "they refused to marry me, and so to them I owe my earthly happiness."

A Poet's Will.—Joseph J. Cassidy, a Jasper county, Missouri, farmer, died recently and left two wills,—one in rhyme and the other in prose. The document in verse is void because it antedates the other. It reads as follows:

"I, Joseph Johnson Cassidy,
Do hereby publish my intent,
Being sound of mind and memory,
This, my will and testament,
That all my just debts first be paid,
Expense for burial and funeral made,
And all expenses made of late,
Out of my personal and real estate,
I do bequeath, devise, and give,
As long as she, my wife, shall live,
Lot six in the original town of Lever,
To her, assigns, and heirs for ever.
To my adopted daughter, Marie,
I do devise and give in fee,
The southwest quarter of section seven
Township nine and range eleven,
To my two sons, Joseph and Beach,
I do devise one dollar each.
The residue of my estate,
I do bequeath to Mary Kate,
And hereby do appoint her
For my last will executor.
This the eighteenth day of May was done,
In the year of our Lord, nineteen one."

Spirit Will Invalid.—Judge Barnard, of the supreme court of the District of Columbia, has decided that a "spirit will" has no standing in court. The question arose in this wise:

William H. Crowell, a clerk in the Treasury Department, scribbled something on a paper on his deathbed. The writing was wholly illegible. So his wife took it to a medium for translation. The medium declared it was a will.

But when counsel for the widow presented this will in court Judge Barnard refused to recognize it. There was nothing in the law books about spirit wills or even spirit translations of wills. There was a lot about nuncupative, holographic, and other sorts of wills. But that was all.

Mrs. Crowell, the widow, presented to the court a petition that her late husband's brother, Major W. H. H. Crowell, of the Army, be appointed administrator of the estate. An affidavit setting forth the spirit message was filed with the petition. In it Mr. Crowell's spirit was represented as requesting the appointment of his brother as administrator and directing that \$5,000 be set aside for the widow. The spirit message concluded:

"This is a beautiful world. It is better than the sixth auditor's office. They cannot put me out here."

The conclusion was regarded by the widow as incontestable evidence of the genuineness of the message. Mr. Crowell shortly before his death was retired for superannuation.

But the court was not convinced. Justice Barnard declared that he would be compelled to ignore the will, and he effected a compromise by appointing as joint administrators the widow and the son of the dead man.

Westminster Abbey Rejected.—The executors of the will of Miss Florence Nightingale, the "angel of the Crimea," who died August 13th, declined the offer of a public burial in Westminster Abbey. They considered themselves bound by the terms of her will, in which Miss Nightingale expressed a wish for a simple private funeral. Miss Nightingale was buried with the simplest ceremony at Wellow, Hampshire, where her parents are buried.

Must not go on Lake.—The will of Charles C. Dickinson, former president of the Carnegie Trust Company, who died a few months ago, contains a bequest of \$4,000 for the education of his son Charles, at Cornell, with the strange stipulation that the son shall forfeit this allowance if he goes "to or upon Cayuga lake."

The lake is used by the Cornell crews and by students for canoeing and sailing. To a nephew he leaves \$2,000 for educational purposes, with the same restrictions regarding Cayuga lake.

Scatter My Ashes.—The will of a California dentist, recently deceased, con-

tains the following unusual provision: "I want my body burned and ashes scattered to the four winds. No religious services over my body, of any kind. Harlow White has promised to say a few words over me. I want the plainest box and a common express wagon to carry the body to the crematory. Cycle clubs invited to attend; beer and sandwiches and lively music furnished, if I have enough money to pay for it."

Spinster's Strange Will.—An extraordinary will has been left by an elderly unmarried lady who recently died in Vienna. Her property, amounting to about \$250,000, is to be divided among her three nephews, now aged twenty-four, twenty-seven, and twenty-nine, and her three nieces, aged nineteen, twenty-one, and twenty-two, in equal parts on the following conditions:

The six nephews and nieces must all live in the same house inhabited by their aunt, with the executor, a lawyer. None of the nephews is to marry before reaching his fortieth year, nor the nieces before their thirtieth; the share of the one so marrying will be divided. Further, the six legatees are admonished never to quarrel. If one should do so persistently, the executor is empowered to turn him or her out of the house and divide the share. The executor is himself forbidden to marry or to reside elsewhere than in the house with the legatees. The testatrix is said to have made this peculiar will because her nephews and nieces continually worried her by asking her to give them money to enable them to marry,—requests she always refused.

Church Tired of Hearing Old Will Read.—The Supreme Court of the United States will be appealed to by officers of the Dutch Reformed Church of America to relieve that body from reading the tedious will of the Rev. Mr. Van Bunschooten at every official meeting of the church corporation. For seventy-five years the reading of the will has constituted a routine part of the business of every meeting of any corporate body of the Reformed Church in this country.

It appears that the church seventy-five years ago accepted a legacy of \$20,000

from Rev. Mr. Van Bunschooten, who made his gift conditional, requiring that his will be read at every session of the church officary forever. The money has long since been spent, but the duty of reading the irksome testament still hangs over the church.

Provision for Possible Widows and Children—The will of John B. Luther, formerly of Fall River, Massachusetts, probated in San Francisco and disposing of an estate of more than \$100,000, contains a peculiar clause, which reads:

"I do hereby declare that I am not married and that I have no children. I have noticed, however, the facility with which sworn testimony can be procured and produced in support of the claims of alleged widows and adopted children, and the frequent recurrence of such claims in recent years. I therefore make express provision in this my last will as follows: I give and bequeath to such person as shall be found, proved, and established to be my surviving wife or widow, whether the marriage be found to have taken place before or after the execution of this will, the sum of \$5, and to each and every person who shall be found, proved, and established to be my child by birth, adoption, acknowledgment, or otherwise, and whether before or after the execution of this will, the sum of \$5, and I declare that I do intentionally omit to make for any of the persons in this paragraph referred to any other or further provision."

A Novel Will.—The will of John W. Wallace, of Brooklyn, who died a few months ago, contained the following

novel provisions, which, it is reported, were literally carried out:

"That my body shall be placed in a pine box not to cost more than \$5, placed in an express wagon, and taken to a crematory, and that after cremation the ashes shall be scattered in a field; the entire cost of the disposal of the body not to exceed \$50.

"My reason is that I believe that a man gets out of life all that he is entitled to, according to the amount of brain and energy he puts in, and when he dies he should not occupy ground that may be needed for highways or for planting corn or for any other purpose that further generations may have for it. I believe that when I die, my money, if I have any, should go to those dependent upon me, and not into expensive coffins and flowers."

Estate Left to the Deity.—One of the most unusual wills ever recorded in Massachusetts was that of Charles Hastings, of Ashburnham, who leaves real estate valued at several thousand dollars, and transfers the title of the same to the Lord Jesus, appointing himself trustee of the property.

Will of Sixteen Words.—The shortest will on record in Connecticut was filed in the surrogate's office at South Manchester, Connecticut, last September. It contains exactly sixteen words, leaving the \$50,000 estate of the late Knight D. Cheney, Jr., to his widow. The will is as follows: "I give and devise all my property, real and personal, to my wife, Ruth Lambert Cheney."



Judges and Lawyers

Personal Items concerning Bench and Bar.

Colorado's Lamented Jurist

Chief Justice Robert W. Steele, of the Colorado Supreme Court, died at Denver on October 12th, as the result of a stroke of apoplexy. He was born November 14th, 1857, at Lebanon, Ohio. In 1870 the Steeles moved to Denver, when Robert was but thirteen years old, and he grew to manhood there, attending the Denver public schools.

Following his attendance at Columbia, Judge Steele returned to Denver, and was admitted to the bar in 1881. Previous to that time, in 1880, he was appointed clerk of the Arapahoe county court, and served until 1884. Then he resigned to take up the practice of law.

In 1891 Judge Steele was elected district attorney, and served with distinction until 1895, when his term expired, and he was appointed county judge to succeed Judge O. E. LeFevre, who had gone to the district bench. Judge Steele was re-elected in 1895 and 1898, and it was during his term as county judge that he laid the foundation for the juvenile court, afterwards developed by Judge Ben B. Lindsey. Judge Steele started conducting the cases of children separately from those of old and hardened

criminals, and at the same time extended the protecting arm of the court over these first offenders hardly old enough to realize the seriousness of their offenses. He had been on the supreme bench for ten years and was a candi-

date for re-election at the time of his death. Four of the dissenting opinions handed down by him have gone deep into state history. The first of these was his dissenting opinion during the Peabody administration, when the supreme court held that the governor, under an emergency, had the right to suspend the writ of habeas corpus. He dissented again in the Toole case, when the supreme court took charge of the Denver election, and also when the supreme court set aside the Rush amendment. Lastly, he dissented when

a \$1000 fine was imposed upon Senator T. M. Patterson for contempt of court.

As a judge he had the unusual and wholesome faculty of detecting the very right of a case; and he also had those qualities of heart and mind which enabled him, to a very large extent, to put aside technicalities, and sometimes even, perhaps, precedents, and mete out common-sense justice.



CHIEF JUSTICE ROBERT W. STEELE

Oregon's Attorney General



HON. A. M. CRAWFORD

Marvin, of Walton, New York. He was admitted to the bar at Binghamton in 1878. Two years later Mr. Crawford went to Oregon, where he has since practised his profession. He served for a time in the Oregon state militia. He has held several public positions. From 1890 to 1894 he was receiver of the United States land office at Roseburg, Oregon. In 1896 he was elected a member of the Oregon legislature. In 1902 he was chosen Attorney General of the state and honored by a re-election in 1906. Mr. Crawford has conducted the affairs of this important office in an admirable manner.

Edwin B. McCarter, formerly of Columbus, Ohio, who was secretary of the Ohio State Bar Association (1904-1910) until he tendered his resignation at the last annual meeting of the association, has opened permanent offices in Finsbury Pavement House, Finsbury Pavement, London, E. C., for the practice of American law. Mr. McCarter's plan is to represent American law firms in England and on the Continent, and to place English solicitors in touch with the attorneys of the United States as occasion demands.

Judge F. M. Crosby, aged eighty years, died at Hastings, Minneapolis, on November 16th. He was the judge of the district court there, and was the oldest judge in years and point of service in Minnesota. He had been on the bench thirty-eight years.

Montana's Attorney General

Honorable Albert J. Galen, Attorney General of Montana, was born in Jefferson county, in that state, on January 16th, 1876. He graduated at the University of Notre Dame, South Bend, Indiana, in June, 1896, receiving the degree of LL.B.



HON. ALBERT J. GALEN

The following year he attended the University of Michigan, and in June, 1897, received from that institution the degree of LL. B. He was admitted to the bar of Indiana in 1896, to the bar of Michigan in 1897, and in July of the same year was licensed to practise in Montana. In January, 1907, he was admitted to practise before the Supreme Court of the United States.

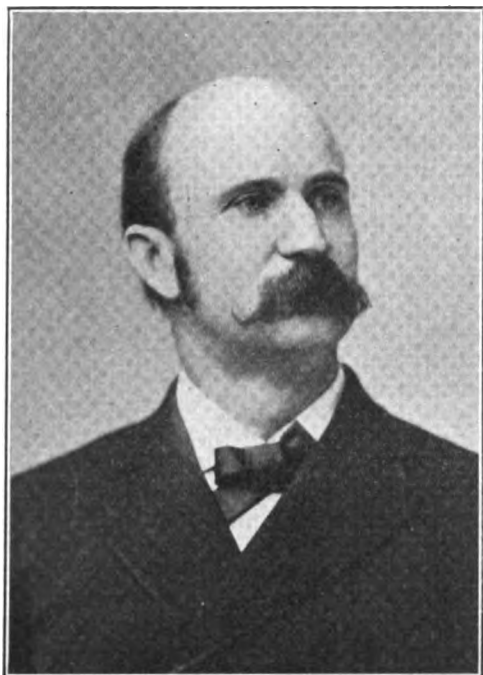
Mr. Galen commenced the practice of his profession in 1897 in the city of Helena, where he had grown to manhood, and has even since maintained an office there. His private business is now conducted under the firm name of Galen & Mettler. Mr. Galen has been remarkably successful in his chosen profession. He was elected to the office of Attorney General in November, 1904, and his able services in that position were recognized by re-election in November, 1908.

New York Loses Former Governor and Statesman.

David Bennett Hill, who died at his home near Albany on October 20, was the last of the old school of New York Democratic politicians, and perhaps the most conspicuous in intellectual ability and the qualities of leadership.

Admitted to the bar at the early age of twenty-one, Mr. Hill at once actively interested himself in politics, and throughout his long and busy career was a consistent member of the Democratic

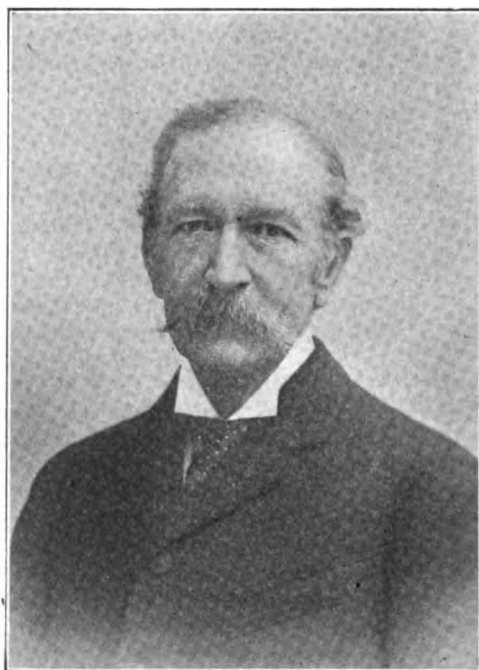
Two Distinguished Statesmen Pass Away



HON. DAVID B. HILL

party. At the same time he practised law with steadily increasing success, became recognized as one of the leaders of his profession in New York and was chosen president of the State Bar Association. After having served as a member of the state assembly and as lieutenant governor, he was elected governor and held that office until he became United States Senator. It was well known to his friends that he was far from satisfied with the distinguished public honors he had achieved, since his ultimate ambition was to be President.

Mr. Hill was meant by nature to be a great lawyer and a great statesman, rare as the combination is in fact. There was an old-fashioned simplicity and sturdiness in the administration of Governor Hill, as well as a brilliancy and force in Senator Hill, that justly command a degree of admiration. In the Senate he made the argument against the income tax provision of the Wilson tariff law that was afterwards made the basis of the



HON. LAMBERT TREE

decision of the United States Supreme Court against the validity of that section.

His private life was as nearly flawless as it seems possible to be; for he had absolutely no vices whatever, not even the most common habits of gentlemen concerning liquor and tobacco. It is known to comparatively few that, though a bachelor, he had always such a fondness for bright young men as to have one or more constantly being educated at his expense. His generosity in a score of directions are equally unknown to the public, but they were unfailing all his life.

Illinois Loses Prominent Citizen and Former Diplomat

Judge Lambert Tree, who died on October 9th, was almost equally prominent in the business, social, and political life of Chicago.

He was born November 29, 1832, at Washington, D. C., and received his ear-

ly education in private schools of the city. Leaving the preparatory schools, he was sent to the University of Virginia, from the Law School of which he obtained a degree. He then returned to Washington, where he entered the law office of James Mandoville Carlisle, then a celebrated lawyer. It was while in this office that he first met Rufus Choate. There were no stenographers in those days, and Choate went to Carlisle's office looking for some one who could take down in long hand an argument he was to deliver in the supreme court. Young Tree had had some practice in this work in taking down the debates from the Senate galleries. He volunteered to aid Choate, and the offer was accepted. Tree was admitted to the bar October 15, 1855. Immediately he gave up his place in Mr. Carlisle's office, and, having consulted Senator Stephen A. Douglas as to the best part of the West in which to begin his career, he set out for Chicago.

Among the other letters which Mr. Tree carried was one to John M. Douglas, just then appointed attorney of the Illinois Central Railroad Company. Mr. Douglas offered him a position at a salary of \$1,200 a year. That wage for those days was a big one, but Mr. Tree refused it. He said that he wanted to get into general legal practice.

The same day he arranged to get desk room in the office of Hervey & Clarkson, paying rent with services. The first week of his stay he got his first case. He was retained to defend the Illinois Central against a farmer whose cow had been killed by a train. Murray F. Tuley was the opposing counsel, but Tree won a nonsuit. His fee was \$10.

Soon after this Hervey & Clarkson dissolved partnership, and Mr. Tree effected an arrangement with Mr. Clarkson, which later proved very remunerative.

The offices of Clarkson & Tree were on the second floor of a building at the southeast corner of Clark and Lake streets. It was in this office that Mr. Tree first met Abraham Lincoln. Lincoln then was practising in Springfield, and had come to Chicago on a matter of business in the transaction of which he was compelled to consult a law book. Clarkson & Tree had one of the best law

libraries in town, and to their office Mr. Lincoln went for the book. He took the volume, which was much tattered, away with him, and nothing was heard of it for several weeks. Then Mr. Lincoln walked into the office one day with the book newly bound. "I hope you don't object," he said, as he left it.

From that day begun a business connection with Lincoln's Springfield office, which continued to the time that Lincoln became President.

At one time the Chicago firm had for collection a note belonging to a client in New York against a man residing in southern Illinois. The note was sent to the Springfield firm, with instructions to sue in the United States courts. This Lincoln's firm did and got judgment, but before execution could be levied the debtor came in and settled in cash for several thousand dollars. Lincoln's fee for this was \$100.

In 1865 Mr. Tree became a circuit judge, serving four years. He ran for the United States Senate on the Democratic platform in 1885, but was defeated by John A. Logan by one vote. That same year he was appointed minister to Belgium, where he remained three years before going to St. Petersburg. During his residence in Brussels, Mr. Tree represented the United States government in the International Congress for the Reform of Commercial and Maritime Law, an assemblage of representatives of all civilized nations of the world.

After a year in Russia he returned to this country, and in 1891 was appointed by President Harrison as the Democratic member of the Monetary Commission.

He was a great advocate of a "Chicago Beautiful," and made many handsome gifts to the city. There are at present in Lincoln park two fine samples of his generosity to the city of his adoption. He was the donor of the two bronze statues,—one of LaSalle, which he gave to the city in 1889, and the other of a Sioux Indian, entitled "A Signal of Peace," which he donated in 1894. The latter is one of the sights which visitors always go to see when in Chicago, and is known all over the country as one of the greatest pieces of American sculpture.

Lambert Tree was a man of unusual

intellectual endowment and equally exceptional moral worth and courage. He attained enviable prominence at the bar, on the bench, and in the political arena. Judge Tree's active participation in public affairs came to an end years ago, but his interest in important civic questions and movements continued undiminished up to the moment of his death.

Judge James D. Fox, chief justice of the Missouri supreme court, died suddenly in St. Louis on October 6th. He was born in Fredericktown, Madison county, Missouri, January 23, 1847. He was educated at St. Louis University and admitted to the bar in 1866. He was elected judge of the circuit court in the twentieth judicial circuit, now the twenty-seventh, in 1890; was re-elected in 1886, in 1892, and again in 1898. In 1902 he was elected to the supreme bench.

Judge Fox, says the St. Louis Republic, was a lawyer of the old school. He was of the rugged type in personality and mannerisms, and his determination and strength of character, tempered by certain very human qualities, were of the sort that commands admiration. The unusual expressions of regret that follow his death show that the capacity for forming strong friendships commonly possessed by men of this type was his.

Those who came in intimate contact with Judge Fox were left in no doubt as to his natural aptitude for the legal profession. He came of a legal family and his long service on the bench had made him deeply read in the law.

A man of native shrewdness and mature equipment for a judicial service is lost to the state in his death.

Judge M. L. Maginnis, a prominent attorney of Ogden, Utah, and former justice of the supreme court of Wyoming, died at Ogden on October 26th. Judge Maginnis was fifty-two years old and was born at Somerset, Ohio. He came West in 1888, being appointed justice of the supreme court of Wyoming by President Cleveland. After serving his term in Wyoming he came to Ogden and built up a large practice in Utah, Idaho, Wyoming, and Nevada. It is said he was the youngest chief justice ever appointed.

Illinois' Attorney General

Honorable William H. Stead, Attorney General of Illinois, is a native of that state, having been born in La Salle county June 12, 1858.



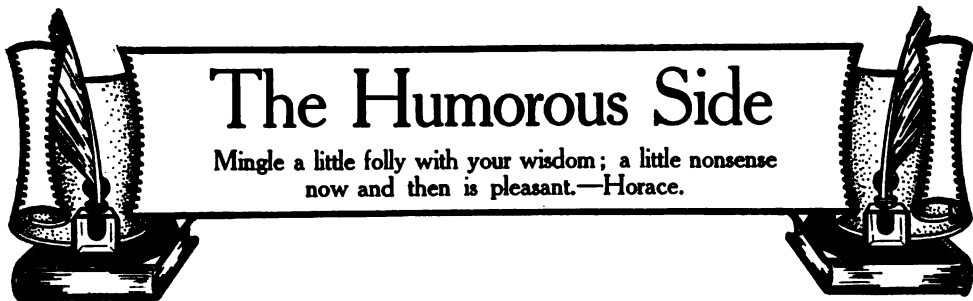
HON. WILLIAM H. STEAD

During the first sixteen years of his life, he remained on his father's farm, attending the district school in the winter and working on the farm in the summer. He attended the seminary at Onarga, Illinois, for one year, and, at the age of seventeen, taught his first village school at Milford, Illinois. Subsequently, for several winters he taught school in La Salle county and during the summers worked on his father's farm. By these means he earned sufficient money to give him a collegiate education.

He attended the normal school at Ladoga, Indiana, where he spent one year, later taking a course of study in DePauw University, at Greencastle, Indiana.

Returning from college, Mr. Stead entered upon the study of the law in the office of Honorable Washington Bushnell, a former attorney general of Illinois. He was admitted to the bar in 1883, and entered upon the practice of the law at Ottawa.

Since his admission to the bar, his energies have been directed along the lines of his chosen profession. Shortly after his admission to the bar, he held the office of city attorney of Ottawa. In 1896 he was elected state's attorney of La Salle county and served one term. In 1904 he was elected Attorney General on the Republican ticket. He had no opposition for the nomination for Attorney General in 1908, and at the election was again elected to that office, and is now serving his second term as Attorney General of Illinois.



The Humorous Side

Mingle a little folly with your wisdom; a little nonsense now and then is pleasant.—Horace.

Bequeathed a Career.—"Hello, Johnny," said the village blacksmith, "I hear your paw has gone into politics." "Sure." "How'd that happen?" "Well, my uncle left him a silk hat and a Prince Albert coat in his will, and paw had to do something with them."—Washington Star.

Getting Even.—Lawyer—"In this will you really insist upon being buried at sea?" "Yes. You see, my wife says that when I'm dead she's going to dance on my grave."

Her Share.—H. Hamilton Fyfe, the English novelist who visited Reno to see the Jeffries-Johnson fight, said at a dinner in Chicago on his way back home:

"The Reno divorce colony was very interesting. There is quite a large colony in Reno of ladies and gentlemen who are engaged in divorcing their eastern husbands or wives.

"To talk of their marital relations with these people is difficult and dangerous work. It is like the case of the lawyer who said to the pretty widow:

"'Well, madam, as your husband left no will, you'll of course get your third.'

"She blushed and smiled under her crape-trimmed bonnet.

"'Oh, I hope to get my fourth,' she said. 'He was my third, you know.'"

His Audience with Him.—Nobody was more witty or more bitter than Lord Ellenborough. A young lawyer, trembling with fear, rose to make his first speech, and began: "My lord, my unfortunate client— My lord, my unfortunate client— My lord—"

"Go on, sir; go on!" said Lord Ellenborough; "as far as you have proceeded hitherto the court is entirely with you."—Life.

His Occupation.—A Boston lawyer, who brought his wit from his native Dublin, while cross-examining the plaintiff in a divorce trial, brought forth the following:

"You wish to divorce this woman because she drinks?"

"Yes, sir."

"Do you drink yourself?"

"That's my business!"—angrily.

Whereupon the unmoved lawyer asked:

"Have you any other business?"—Everybody's Magazine.

Breaking the News.—One of the most picturesque figures of the New York bar was the late Thomas Nolan, a lawyer, whose witty retorts furnished subjects for merriment at many a lawyers' gathering. Now, Nolan was at one time counsel for a poor widow who was suing a construction company for the death of her husband. The case had been placed upon the day calendar, but had been frequently postponed, and Mrs. Moriarity by the time she made her fifth call was in an exceedingly disturbed frame of mind, consequently the tones of Nolan's rich brogue were more than usually fervid as he fought against the sixth adjournment.

"I am sorry," said Justice Dugro, "but your opponent has shown me good cause for the adjournment, Mr. Nolan, and the case will therefore go over until to-morrow."

"Very well, sor," said the barrister, sweetly, "but might I ask wan personal favor of the coort?"

"Certainly, sir, with pleasure."

"Will your Honor kindly sthep down to my office and just tell Mrs. Moriarity that you have adjourned the case?"—Success.

A Ticklish Subject.—A great Scotch lawyer with wit and learning in equal parts was pleading before a judge with whom he was on most intimate terms, says the *London Mail*. Happening to be retained for a client of the name of Tickle, he commenced his speech:

"Tickle, my client, the defendant, my lord—"

He was interrupted by a laughing court.

"Tickle her yourself," said the judge promptly. "You are as able to do so as I am."

A Waste of Postage.—Several lawyers in a southern city were discussing the merits and demerits of a well-known member of the bar who had been gathered to his fathers, when one of the party related an incident of the time when he had studied in the old man's office.

It seems that the inefficiency of the copying clerk there kept the judge continually worked up to the point of explosion. One day a wire basket fell off the top of the clerk's desk and scratched his cheek. Not having any court-plaster, the young man slapped on three postage stamps and went on with his work.

Later in the day he had occasion to take certain papers to the court, and, forgetting all about the stamps, he put on his hat to go out. At the door he met the judge, who raised his head and fixed the clerk with an astonished stare.

"Anything wrong, sir?" stammered the bewildered clerk.

"Yes, sir, there is!" thundered the old gentleman. "You are carrying too much postage for second-class matter!"—September Lippincott's.

How Could He?—They had argued long and furiously over the question, "Can a man marry his widow's niece?" and the highly talented lawyer in the corner had waxed eloquent over the marriage laws of every state in the union, every country in the world, civilized and uncivilized, and had cited the affinity

tables of every church, and even the legislation of Lycurgus down to that of Brigham Young, when a young man quietly announced his intense desire to be informed where the deuce a man was when his wife was a widow? Then the discussion closed down, and fourteen excited controversialists ordered ice water.—*New York Times*.

Admired His Vocabulary.—A story was recently told of the elder Judge Peckham, father of the supreme court justice. In the early days of dentistry a hickory plug was put into the cavity to fill the space where a tooth ought to be. This plug had to be gently pounded into its desired position. The old judge was somewhat addicted to strong language, and when the dentist began his work the judge indulged in some classic comment. As the tapping of the plug continued, he threw all dignity to the four winds of heaven, and his language became decidedly "more forcible than elegant." When, however, he arose from the chair, after what seemed to him an interminable period of agony, he pulled out all the stops in his vocabulary for a grand climax. The impression on his listener seems to have been deep and lasting. As the judge passed out, the dentist grimly remarked to a waiting patient:

"Wasn't it beautiful? It wasn't really necessary to pound half as long, but I did so enjoy his inflection that I almost pounded the hickory plug into splinters. Wonderful command of language the judge has!"

A Question of Precedence.—A dispute about precedence once arose upon a circuit between a bishop and a judge, and after some altercation the latter thought he should quite confound his opponent by quoting the following passage: "For on these two hang all the law and the prophets." "Do you not see," said the judge, in triumph, "that even in this passage we are mentioned first?" "I grant you," replied the bishop, "you hang first."

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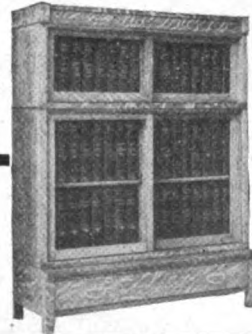
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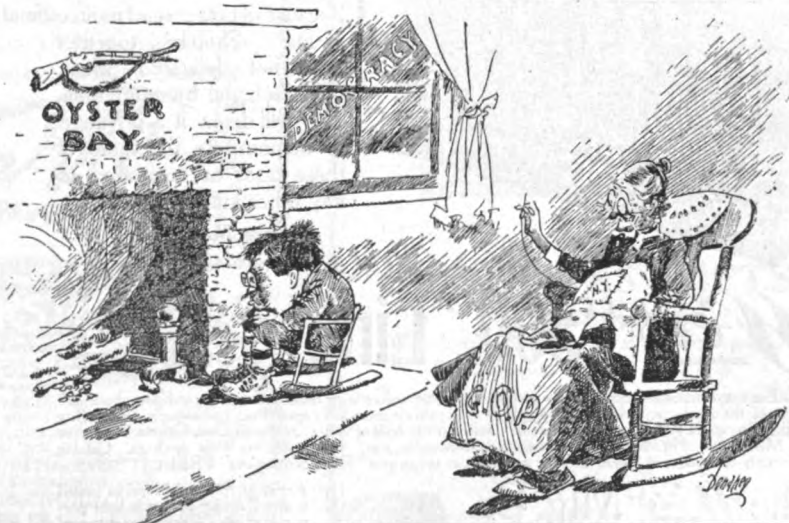
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By FLORENCE KELLEY

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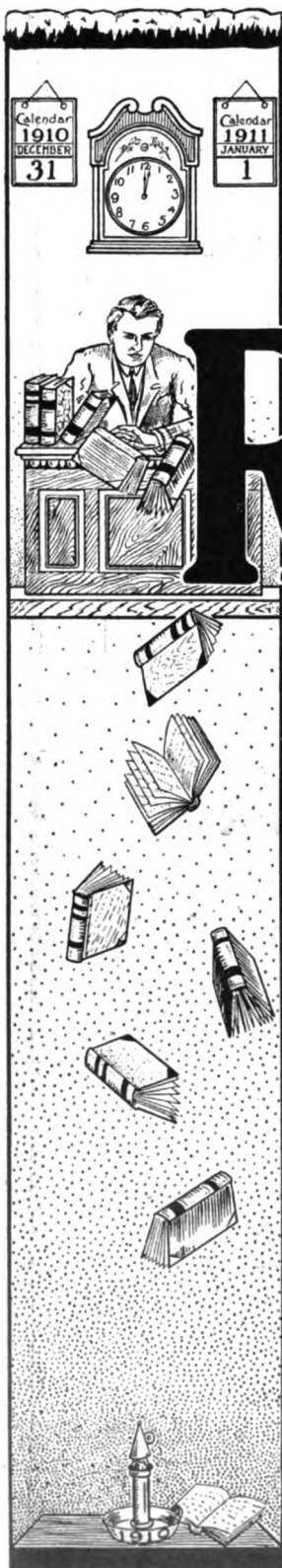
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The New Chief Justice.

The new Chief Justice of the United States is Justice Edward Douglass White, who is now the senior justice in point of years of service in the court, with the exception of Justice Harlan, who has already passed the age at which he is eligible to retirement. Justice White's nomination was immediately confirmed by the senate as a mark of respect.

Coming from a family of judges, his father and his grandfather before him having been on the bench, Justice White has had a judicial inheritance as well as legal training. His knowledge of the civil law is generally regarded as the most profound of any man that ever sat on the bench of the Supreme Court of the United States. Of late he has developed a specialty for questions of interstate commerce.

Although a southern man, Justice White, as his record on the bench shows, has strong Federal leanings. He sided with the minority in upholding the income tax when it was tested under Grover Cleveland's administration, and he also sustained the government in the Insular Cases. In the Northern Securities Merger Case, however, he joined with the minority in deciding against the government. These are the most striking cases in which he has participated.

He was born in the parish of LaFourche, Louisiana, on November 3d, 1845. His parents were Catholics, and he is a confessor of that faith. His education was in Catholic institutions.

Justice White served in the Confederate Army during the Civil War, practised law among the people of Louisiana, and became a sugar planter on its lowlands. His ability and high character were recognized by the people in repeated commissions as a public official. In 1874 he was elected a senator in the Louisiana legislature.

In 1878 he was appointed associate justice of the supreme court of Louisiana. Later he retired to his law practice again, and became the leader of the bar in his state.

In 1891 he was elected to the United States Senate, serving until 1894, when he was appointed associate justice by President Cleveland.

The President expects his new chief justice to undertake at once the task of reforming the equity procedure in this country. He has also recommended in his annual message that the Supreme Court be empowered to lay down rules governing procedure at law.

Portraits and sketches of the two newly appointed associate justices of the Supreme Court, Willis VanDevanter and Joseph R. Lamar, will appear in the next number of CASE AND COMMENT.

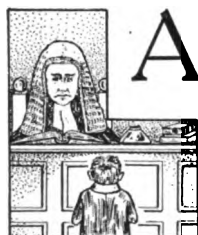


G. D. White

Child Labor Legislation

BY MRS. FLORENCE KELLEY

Secretary of National Consumers League and Member of
Board of Trustees of the National Child Labor Committee.



AMONG the characteristic features of child labor legislation in the United States, the chief are diversity, lack of unity, and insufficiency. This applies to the legal age for beginning to work, to the legal working hours, to work at night, to the educational requirement or the lack thereof, to the standard of health and stature, and finally, and immeasurably important, to enforcement by inspectors, school officials, and courts.

So great is this diversity that the standard of legislation in the Southern states is probably farther removed to-day from that of the Northern states, than it was in 1900, when the present crusade for efficient protection of working children was just beginning.

Several Northern states have made great strides. Among the Southern states, Kentucky and Louisiana are the only ones to which those terms could be applied without irony.

In the Northern states there is an irregular, but continuing, movement in the general direction of nonemployment of children before the sixteenth birthday. This is attempted directly only in Montana, which provides that such children shall not be employed in any mine, mill, smelter, factory, steam, electric, hydraulic, or compressed air railroad, elevator, or place where any machinery is operated, any telegraph or telephone office, or as messenger, or in any occupation not enumerated above, known as dangerous or unhealthful. Furthermore, illiterate children cannot be employed in any oc-

cupation, such as agriculture, or domestic service, before the sixteenth birthday.

Indirectly a strong influence is exerted in the same direction by the New York, Illinois, Ohio, and Oregon provisions that a child under sixteen years of age cannot work longer than eight hours in a day. This spoils the appetite of manufacturers for children, more in New York factories, perhaps, where children must be sent home at 5 P. M., than in Ohio and Oregon, where they may work until 6 P. M.; and still more than in Illinois, where their legal day can be stretched until 7 P. M., and the 8-hours limit is correspondingly more difficult to enforce.

Ohio restricts to 8 hours the work of girls below the age of eighteen years in all gainful occupations, and forbids their working in the night between 6 P. M. and 7 A. M. This statute has been sustained by the courts of Ohio, when questioned, on the ground of constitutionality. This Ohio law excels as to the greater age of the young workers protected by it, while the New York law excels in fixing 5 P. M. as the closing hour for all below sixteen years of age who work in factories, and being correspondingly easier of enforcement.

Another unique discourager of young employees is the New York provision enacted in 1910, forbidding in cities of the first class (*i. e.*, New York, Buffalo, and Rochester) the employment of boys under twenty-one years of age between the hours of 10 at night and 5 in the morning. Even before the passage of this law, it had been nominally illegal to employ children under sixteen years of age, after 7 o'clock at night, in the telegraph and messenger service. The enforce-

ment of this older provision is valuably re-enforced by the new extension of similar protection to older boys.

It is much more difficult now to employ a boy under sixteen years of age at midnight, under the pretext that he appeared older and represented himself as being older, since the prohibition applying to the little chaps applies also all the way up to the age of twenty-one. Not one boy in ten thousand who is under sixteen could make any pretense whatever to being over twenty-one. While the number of boys in New York affected by this new legislation is not very large, the new law is nevertheless one more influence in the general tendency to shut out entirely the younger workers.

The similar bill introduced in Ohio at the legislative session of 1910 resulted in the passage of a law providing that no boy under the age of eighteen years may be employed by a telegraph or messenger company between the hours of 9 in the evening and 6 in the morning.

Maryland also followed haltingly in the same direction, by prohibiting night work below the age of sixteen years, and the sending of any minor to receive or deliver a message at any disorderly house. Before the enactment of this new Maryland law, a boy of twelve might be employed all night as a messenger, and sent to any place, however disreputable the place or the boy's errand might be.

In Georgia, at the recent summer session of the legislature, a bill modeled on the New York law, but fixing the age for night work of telegraph and messenger boys at sixteen years instead of twenty-one, passed the senate ten seconds before adjournment, and will take effect on New Year's Day.

The small number of states in which there is any effective prohibition of night work in the telegraph and messenger service appears to be due to the prevailing ignorance of conditions attending such work. The report of the national child labor committee on this subject was of such a character that it could not be printed or mailed. The New York state legislative committees, to which this report was submitted, recommended, without a dissenting voice, the immediate passage of the bill above described, and in

the assembly there was neither a speech nor a vote against it. In the senate, a question asked for information by a senator led to an impassioned speech in favor of the bill and the boys by a senator from New York city, and the bill passed both Houses without further incident. The law has been in force since October 1st, 1910.

A much longer crusade against night work of boys has been carried on in relation to glass manufacture. In Illinois 7 p. m. was established as the closing hour in 1905, then followed Ohio with 6 p. m. in all gainful occupations, and, beginning with New Year's Day, New Jersey will form a trio with these enlightened glass-manufacturing states. Yet it is still legal for boys fourteen years old to work throughout the night in glass works in Maryland, West Virginia, Pennsylvania, and Indiana.

Unfortunately, no state has yet made specific provision with regard to girls in the telephone service. In Cleveland, Cincinnati, and Columbus, Ohio, however, the writer has observed that in using the telephone late at night it is always a man's voice which responds to the call. In other states the usage appears to be that new employees are set to work at night and on holidays, when the demand upon the service is least. This involves, obviously, the employment of the younger operatives, the new recruits, at night; and there has been hitherto no such crusade against this employment of little girls in the telephone service, made by the national child labor committee or any other of the organized advocates of the rights of children, as has been so auspiciously begun in the case of the telegraph boys.

It is characteristic of all these restrictions that, while indirectly, they tend to reduce the total number of young employees, directly and immediately they benefit the contingent who remain at work. A short working day and safety from work at night are affirmatively good for all who get them.

The commission on uniform state laws originally appointed by the American Bar Association, and now reinforced by the appointment by the governors of the states of several additional members, has



CHILD EMPLOYED IN COTTON MILL.

Height 51 inches. Has worked one year part of the time at night. Earns 48 cents a day.. When asked her age she said "I don't remember" then added "I'm not old enough to work."

now under consideration, for final action in 1911, a draft for a uniform child-labor law. This draft has been prepared by a special committee of which Mr. Hollis R. Bailey, of Cambridge, Massachusetts, is chairman. When adopted by the commission, this draft will be recommended to all the states for adoption.

Among the fundamentals of this law are the uniform age for beginning to work, fixed at fourteen years, provided the children have finished the eighth grade of the public-school curriculum, and are of the normal stature and in good health; the uniform 8 hours day, closing at 5 P. M.; and uniform documentary evidence of age, with an effective preference given to the birth certificate as compared with all other documents.

A long campaign will be required to achieve the establishment of this standard in states in which, as in South Carolina, there is still no lowest age limit; and as in Georgia, where orphan children may legally work in cotton mills eleven hours in twenty-four and sixty-six hours in a week.

Three kinds of work done by children

are still in need of effective restriction in every state in which they occur,—the street trades, tenement home work, and berry picking. It can be said virtually, without modification, that nothing effective has yet been done in any state with regard to these industries, though the number of children employed in all three constantly grows.

The places in which these industries are carried on make the task of enforcement of statutes unusually difficult. Berry bogs and fields are commonly remote and inaccessible to school authorities and labor inspectors, while rural magistrates and juries North and South alike view with leniency the employment of children.

Street children are as hard to follow up today as they were in the days of Victor Hugo's gamins of Paris.

The cruel decision of the court of appeals in *Re Jacobs* (98 N. Y. 98) has effectively blocked all effort to restrict or prohibit the work of children (even of those three, four, and five years of age) in the bosom of the family. Until that decision can be reversed, and indus-

try can be banished from the kitchens and bedrooms of the poorest of the poor, we shall have laggards in our schools, special outdoor classes for anemic school children (who are working children as well), and a never ending hopeless crusade against tuberculosis in every city in which tenement-house manufacture is tolerated.

In no respect is child labor legislation in the United States more diverse than in regard to enforcement. Judges, juries, prosecuting and county attorneys, probation officers, truant officers, mercantile and factory inspectors, all figure in the varying processes of enforcement in the different states.

Manufacturing states without factory inspectors, and mining states without mine inspectors, afford no adequate protection to working children. If here and there a probation officer attached to a juvenile court makes an occasional arrest of an employer, it is nowhere the prime duty of these officers to make systematic search for children working in factories, stores, workshops, etc., least of all to ascertain the conditions under which they are working. Nor can truant officers be asked to enforce closing hours or stop night work.

The value of child labor laws depends upon the number and quality of the inspectors appointed to enforce them, the tenure of office of the inspectors, and the amount of money appropriated for

their use. Where factory inspectors are politicians, and truant officers are aged or decrepit or indifferent, the children suffer accordingly.

Nowhere is the inequality of our labor legislation more conspicuous than in a collection of reports of enforcing officials. Some states, like Delaware, make no provision for publication; other states for biennial, and in them one half of the data is inevitably belated when made public.

The essentials of a good report are promptness, fullness and clearness. The reports of the New York department of labor set, in all these respects, a standard which is not even approached by the reports of any similar department in the country. They comprise a monthly list of all tenement houses licensed for manufacture; a quarterly bulletin containing statistics, judicial decisions, the substance of current legislation, and much general information concerning labor, child labor included; and finally, an annual report of inspections and prosecutions for violation of the labor law, setting forth with admirable candor the successes, the limitations, and the failure of the department.

No child labor legislation in any state can be regarded as effectively enforced, unless the officials responsible for the work give equally prompt and clear account of themselves.

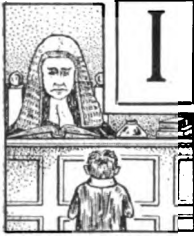
CHILD LABOR ought to be abolished, not so much at the behest of the duty of safeguarding the Republic, but rather because of the duty of the Republic to safeguard its children. The child-labor battle should be waged on the highest possible ground, — the right of the child to justice. —

Dr. STEPHEN S. WISE

Control of Children by the State

BY HONORABLE BEN. B. LINDSEY

Judge of the Juvenile Court, Denver, Colo.



IN dealing with the morals of the child, it has never been the purpose of the state to usurp the function of the home, the school, or the Church; but under our form of government, it always has been the duty

of the state to deal with certain child offenders. Under the common law accepted in many of the states of the Union with some modifications by statute, a child after the age of seven might be guilty of crime; and when he violated the law he was dealt with by the state, under the same court procedure as in the case of adult criminals. One of the first protests against this absurdity was made by a schoolmaster in England in a treatise on criminal jurisprudence and the actual working of the penal code of laws, published in London in 1833. Please observe this description of trials of boys in the Old Bailey Court, the leading criminal court of London:

"The Old Bailey Court, in proportion to the numbers, as often sentenced boys as men to transportation for fourteen years and life. Nothing can be more absurd than the practice of passing sentence of death on boys under fourteen years of age for petty offenses. I have known five in one session in this awful

situation; one for stealing a comb almost valueless, two for a child's sixpenny story book, another for a man's stock, and the fifth for pawning his mother's shawl. In four of these cases the boys put their hands through a broken pane of glass in a shop window, and stole the articles for which they were sentenced to death, and subsequently transported for

life. This act, in legal technicality, is housebreaking. The law presumes they break the glass, and it is probable in most instances they do so. In two of the cases here named, however, the prosecutrix's daughter told me there was only a piece of brown paper to supply the place of that which once had been glass. In the latter case, the unfortunate mother caused her son to be apprehended, in the hopes of persuading the magistrate to recommend him to the Refuge for the Destitute, or some other chari-

table institution. She, however, in the course of her examination, said she was from home, and that the house was locked up at the time of the shawl being taken, which was afterwards found at a pawnbroker's. This made it housebreaking; and, in spite of all the mother's efforts, he was condemned to death. He is now in the penitentiary. The judges who award the punishments at the Old Bailey appear to me as if they were under the influence of sudden impulses of



HON. BEN. B. LINDSEY

severity, there being at no time any regular system to be recognized in their proceedings. This the prisoners know, and speculate on, particularly the boys."

Within a hundred years boys, it would seem, have been hanged for what now is denominated petty larceny, and it is not much beyond this period when they were beheaded and their heads stuck upon gibbets as the gruesome reminder of the punishment in store for thieves; and even with two hundred offenses in England at that period punishable by death, many of which to-day are looked upon as the petty offenses, crime increased. It was such protests as that of the old schoolmaster that caused considerate home secretaries to commute such sentences to imprisonment for life or a period of years in the penitentiary; but to one at all familiar with the degradation that came to childhood through the old methods of the jails, this consideration might be questionable. The state that sent the child out into life with his soul seared and his body debauched, as through jails was so often the case, was just as culpable as the state that choked the child to death upon the theory that it was choking crime. The state had not waked up to the difference between evil and the child; it had not waked up to the truth the Master taught, that evil is overcome with good, not with the stripe, the iron bar, or the degrading lash, much less the hangman's noose. The Federal government as yet has not provided us with very reliable statistics as to the number of children dealt with by police officers and courts. And it is to be hoped that a Federal children's bureau will be established, to gather, specialize, and focus statistics and facts upon this important subject.

I am satisfied, however, from special inquiry, and investigation in sixty of the large cities and towns of the nation, that we do not overestimate when we place the number of children dealt with by police and court officials every year at one hundred thousand. It might reach two hundred thousand.

As the ages of dependents and delinquents are now being measured in most of the states up to the eighteenth year, it will be seen that within the period of

delinquency and dependency, as fixed by the laws of the states, the courts of the nation are called upon within this period of the child's life to deal with nearly two million children under this minimum estimate, and nearly four million under the maximum estimate.

But counting the number even at a million, it should be sufficient to emphasize the responsibility of the state for the child. Until some very material economic changes are brought about, this number is more likely to increase than to decrease. Courts alone will not stop the increase. They are not cure-alls. Children's courts can do much, but whatever they do must be done largely through the home, the school, and the Church. They must bring into the life of the child the influences that come from these institutions responsible for the child, and therefore, the appeal of the state must be to the home, the school, and the Church. In dealing with his morals, instead of taking the child out of these three institutions of his life and putting him in jail, he must be placed under those influences that are as near akin to them as it is possible for the state to devise. The state's effort in this direction may be seen in the development of the industrial schools, training schools, parental schools, detention-home schools, the probation system, and that marvelous revolution in the law which came upon us about ten years ago in Colorado and in Illinois, when the child for the first time in the history of jurisprudence was no longer regarded by the state as a criminal, but rather as its ward; no longer looked upon as the malefactor, to be hung or degraded through the mire and filth of jails and criminal courts, but rather, as in the language of our own statute, "one to be aided, assisted, encouraged, educated;" in a word, to be saved to good citizenship, to be redeemed as the most valuable asset of the state. Therefore, since the appeal of the state must be principally to the home and the school, the work must be done principally by and through the home and the school.

The average young child is frankly, innocently unmoral. He takes what he wants, if he can get it, not because he is an embryonic thief, but because this

is nature; not human nature, but nature itself, and nature is seldom altruistic. The normal child is merely a healthy little animal, to start with, and his morals develop, grow with his growth and strengthen with his strength only when they are guided in the right direction. The most demoralizing agency in childhood is fear, and it may be found at the bottom of most of the immorality among children. The child lies because he is afraid to tell the truth; he may be afraid of a whipping, of one parent or the other, of a bigger boy, of the teacher, of some far-off abstraction called God, a remoter abstraction called the Devil, or a fearfully imminent reality called the bogie man, said to haunt all dark places. In any event, no matter what it is he fears, it is fear that makes him a liar, and this opens the way for all the other derelictions of youth, and age too, for that matter. I lay emphasis upon this because the habit of truth-telling and the attitude of fearlessness are generally either dominant or lacking in the child before he enters the public school. The school is what the children make it, moral, unmoral, or immoral, according to the homes they come from, quite as much as the children are a product of the school. It is very lovely to think of childhood as the age of innocence and uncontaminated virtue, but it is also very dangerous; for childhood left to follow its own devices, its own untaught impulses, its purely animal emotions, is very far from that ideal that we like to believe it. Our morals are very largely a matter of relationship to the life around us. Thou shalt not bear false witness, thou shalt not kill, thou shalt not follow a multitude to do evil, thou shalt not oppress a stranger, thou shalt not covet,—these are the temptations that come with community life, and the boy and girl who go to school are assailed on all sides as never before. It is not to be wondered at that they fail now and then.

Ask the average boy in the juvenile court why he will not steal again, and nine times out of ten he will give you precisely the same answer: "I will get in jail." To my mind, that is an indictment by the child of the teaching in the home and the school. The child has

learned his lesson wrong, a lesson unconsciously taught by parent or teacher: "Steal all you can, cheat all you can, so long as you don't get caught." It is the lesson he carries with him through life into the commercial and business world, and the lesson that develops many of our most dangerous criminals in the world of business and finance. Their intelligence (or, if it fails, the same intelligence of shrewd lawyers ever held in reserve) makes them masters of the art of not getting caught, and like the delinquent child, getting what they want lawfully, if they can; lawlessly, if they must.

One of our difficulties is to overcome this careless teaching, and to teach the child to do right because it is right; because he hurts himself when he does wrong, and because he owes it to himself to do right; because it is weak and cowardly to do wrong, and because it is strong and brave to do right. The threat of a mother or teacher to turn the child over to the policeman or jailer has, in my judgment, started as many criminal careers as any mistake ever made. It is well to hold up the consequences of evil doing, but in doing this the undeveloped mind of the child has too often accepted it as the real motive or the only motive for righteous conduct.

I also wish to contend for a different definition of the sins of childhood. Ignorance of the law cannot be pleaded as an excuse by man; but how is a child to know until he is taught, and why condemn thoughtlessness and ignorance in the same terms which we bestow upon hardened vice? We shall deal more justly with erring youth, and more wisely with the great problem of zigzag human nature if we look upon the cardinal virtues as an achievement, rather than a heritage lost early in life.

After all, the protection of the child against immorality in his life depends upon the strength of his character. Character is founded upon conscience, and conscience comes from the development of the human heart; therefore, the necessity for moral and religious training, which is the very basis of all our principal education and the most important part of it. Thus to solve these difficulties of childhood and youth we must

fall back upon the home, the school, and the Church; and in these recent times of congested cities I would add another factor,—the neighborhood itself. We have four factors in the development of character and childhood which I should put in this order: (1) the home; (2) the Church; (3) the school; (4) the neighborhood.

Of course, the home means the parents, the Church means the Word of God, or other ethical training. It would be well if we had such a perfect condition of society that we could depend principally upon the home and the Church for this moral training; but how is that possible when there are hundreds of thousands of children without homes who are left to shift for themselves because of the ignorance and indifference of parents, or through some economic, social, or political condition? Divorce, desertion, drink, ignorance, poverty, crime, and evil neighborhoods, where lawlessness flourishes through bad politics, provide an example and environment that is a constant source of evil to child life. It is hopeless to expect these children to receive instruction from the natural source,—father and mother. For similar reasons they are without religion or church influence.

Now the state is in certain cases as much responsible for the moral, physical, and mental development of the child, as the parent. Where there is no parent, or where the parents are careless or helpless or unable to discharge their functions, it becomes the duty of the state to step in. Thus we have compulsory school laws, child-labor laws, probate-court laws, juvenile-court laws, non-support laws, contributory-delinquent laws, and so forth. All of these laws simply represent the effort of the state to perform its duty toward the child, just as the clothing and fitting of a child in the home and his being sent to Church, to Sabbath school, or to the public school, represent the effort of the parent to do

precisely the same thing. The state, being burdened with parental responsibility under the law of *parens patriæ*, must take a hand in the development of the child; and since the most important factor in its development is its moral character, the state cannot shirk its responsibility in this respect.

Neither can we leave out of consideration the importance of industrial training. Just in proportion as we equip the child for industrial efficiency, to that extent do we equip him for moral efficiency. Human character too weak to resist temptation is a prolific source of immorality. Therefore, just as we equip the boy and girl by practical training to meet the real conditions of life by ability to care for themselves through honest labor, to that extent do we really strengthen character and reduce the chances to yield to temptation. Medical inspection and the work of the visiting nurses alone, through the direction of the schools, can do more for the moral welfare of the children of this nation than all the children's courts can ever do.

One of two things seems fairly plain: either we must revise our ideas of what is to be exacted from the public schools, or we must reorganize the schools upon a very different and much broader and more expensive foundation. If education is to be made not merely a period of schooling, not even a preparatory course for the duties of life, but part of life itself, it is evident to even a cursory observer that the profession of the teacher is shortly to be regarded quite as seriously as that of the physician or lawyer, and remunerated accordingly. There must be many more classes, and instructors who are specialists in the subject with which they deal. Education must be made so fascinating that compulsory school laws and truancy officers will come to be regarded as anomalies.—Reprinted from the Volume of Proceedings, National Education Association.

Juvenile Offenders and their Treatment

BY BURDETT A. RICH



THE change in the attitude of the courts, and in the whole system of procedure, with juvenile offenders, is one of the greatest advances in civilization that have been made in this generation. It is, to be sure, something more than a generation since boys under fourteen were sentenced to death in England for petty crimes, and it was in 1833 that a published protest against the barbarity of the treatment of children by English judges was made by an English schoolmaster. But it is not long since, in our own country, mere children when arrested were everywhere treated as criminals, and even now that state of things is not entirely unknown. But an amazing advance has been made toward humaner and wiser methods.

Prevalence of Juvenile Crime.

The increase in juvenile crime in recent years is almost incredible. A French writer has given statistics to show that such crimes increased fourfold in France between 1826 and 1880. Judge Lindsey, of Denver, says that over half of the inmates of reformatories, jails, and prisons in this country are under twenty. Another judge places the figure still higher, and says that from 65 to 70 per cent of the criminals going through the courts are between the ages of sixteen and twenty-five. An English prison commission report says that the age of from sixteen to twenty is essentially the criminal age, and that between ten and sixteen is the most important age for the care and formation of character. During 1908 in the children's court of the first division of the city of New York over 8,000 boys and girls under the age of sixteen were convicted of offenses. These figures suggest how vast the total of juvenile offenders must be throughout the whole country.

They force upon us a tremendous conviction that the causes for this fearful prevalence of juvenile crime must be investigated and, so far as possible, removed, else we might as well attempt to bail out the Gulf of Mexico with a dipper while mighty rivers continue to flow into it. Those areas in cities which are infested and fester with vice and crime, fashionable vices which the idle rich make more seductive by the glamour of their wealth and position, evil tendencies of many kinds ceaselessly working to undermine character and make criminals of the young,—need to be dealt with in tremendous earnestness and with the sanest wisdom. But until the causes of youthful crime have been well-nigh abolished, we shall have the problem of caring for youthful offenders.

Moral Responsibility of Juvenile offenders.

The theory that crime is a disease, though worked to the point of absurdity by extremists, has grown out of a recognition of the fact that criminal tendencies may be developed by evil environment, physical defects, or other causes, until they become prevalent and persistent, if they do not, in fact, create a permanent criminal character. It strains the common sense of most people to believe that a banker of unblemished reputation and a lifetime of upright business dealings, who, under the stress of temptation caused by his own bad investments, takes the risk of surreptitiously borrowing funds from his bank, thinking he can soon repay them, and thus becomes an embezzler, is entitled to be absolved from either legal or moral responsibility on the ground that his crime was only the result of a disease. So, in a multitude of other cases. But when a boy or a girl grows up in the slums, with nothing but vice and crime for environment and example, criminal tendencies are as inevitable as physical growth, and one may well think long and carefully before at-

tempting to fix the measure of moral responsibility for crimes committed by one thus literally educated to a criminal career. The enlightenment of to-day is, too slowly, but still somewhat rapidly, bringing home to us the conviction that a vast amount of juvenile crime is the direct and inevitable result of the conditions in which these unfortunate criminals have been left to grow up. The best time to save them is before they have even begun to go wrong, but the possibilities of saving them even after they have once come into the grasp of the law for evil doing are still very great, and it is at this point that, thus far, most of the efforts to save them begin.

Juvenile Courts.

Juvenile courts constitute the first step in the practical reform of procedure in the case of juvenile offenders. They have come rapidly into existence in the last decade. Separate courts for juvenile offenders originated in this country. Massachusetts, as early as 1863, made a provision by statute for separating children's cases from those of adult offenders, but not much effect seems to have been given to this law for a considerable time after. New York, in 1877, enacted that children under sixteen should not be put into the company of adult offenders, either in prison or court room or vehicle, except in the presence of proper officials. In 1892 New York provided, as Massachusetts had previously done, that the cases of children under sixteen should be heard and determined "separate and apart from the trial of other criminals," and that a separate docket of them be kept. In 1902, the first separate court in New York for children under sixteen was established. But such a court had been previously established in Illinois in 1899. New York city claims to be the first to hold its sessions in a building of its own, and also to have a separate detention place for children taken into custody for any reason. Since the movement began it has spread rapidly. The children's court of Denver, Colorado, established soon after that of Chicago, has, by the enthusiastic work of Judge Ben B. Lindsey, become the most famous of all the juvenile courts. A large number of cities

in this country now have courts of this kind, while foreign countries have been quick to follow the lead. The official report of the children's court of New York city said last year that Great Britain, France, Austria, Hungary, Italy, and other nations had established such courts for children, and that Germany already had eighty-six of them. Representatives of nearly every civilized country in the world have visited the children's court of New York to study its methods.

A Probation System and Methods.

The system of probation is the most important part of any children's court. Its value is so great that courts have been quick to adopt it for many adult offenders. The right of a court to suspend sentence on one who has been convicted was held to be inherent in a court of record in the case of *People ex rel. Forsyth v. Court of Sessions*, 141 N. Y. 288, 36 N. E. 386, 9 Am. Crim. Rep. 439, 15 Am. Crim. Rep. 675, 23 L.R.A. 856; and in *State v. Crook*, 115 N. C. 760, 20 S. E. 513, 29 L.R.A. 260; while in other states such power was denied in *Re Webb*, 89 Wis. 354, 46 Am. St. Rep. 846, 62 N. W. 177, 9 Am. Crim. Rep. 702, 27 L.R.A. 356; *Neal v. State*, 104 Ga. 509, 69 Am. St. Rep. 175, 30 S. E. 858, 42 L.R.A. 190; and *People ex rel. Boenert v. Barrett*, 202 Ill. 287, 95 Am. St. Rep. 230, 67 N. E. 23, 63 L.R.A. 82. But some states, by statutory or constitutional provisions, expressly confer this power upon the courts, or deny it. Such power is, however, an essential element of the probation system, and an absolute necessity to any dealing with juvenile offenders as wards of the court instead of as criminals. The methods of the probation system are by no means uniform in different jurisdictions, and it cannot be said that the officials are altogether agreed as to them. A few years more of experience will, no doubt, settle some of these details more definitely. But the results of the probation system in its various forms have been, not merely successful, but overwhelmingly so. One of the probation methods which has attracted great attention is what is called the "big brother" movement. This system enlists young men as probation workers, each of

them having one boy only under his care. In New York city more than a thousand young men, most of them from various men's church organizations, have engaged in this work. Paid probation workers are employed in some places, voluntary probation workers in others, and sometimes both working in the same court. Meetings of judges and other officers and interested persons to consider the development and improvement of this system have become common, and it is clear that we have thus far seen only the beginnings of what is to become a complete revolution in the dealings of the state with juvenile offenders. The last report of the probation commission of New York state shows that more than 9,000 were placed on probation during 1909, and that an increasing number of courts are using the system. The report shows the need of it in rural counties quite as much as in the cities. In the absence of probation, practically the only course available in a rural county is commitment to jail, and this rarely does good, and usually harm.

Should Children's Courts be Regarded as Civil or Criminal.

The power of a court of equity to protect infants even from their own parents, to save them from gross ill-treatment and cruelty or from being reared in immorality, has been for centuries declared and exercised by the English courts of chancery, as shown by many cases reviewed in a note in 37 L.R.A. 787. The question whether a children's court should be regarded as a criminal court or a court of chancery has not been entirely free from uncertainty. The New York city children's court was established as a court of special sessions, and the children are brought before it by arrest. But later laws for children's courts in Buffalo, Rochester, and other New York cities, make them courts of civil instead of criminal procedure, dealing with the children, not as criminals, but as wards in need of the care and protection of the state. This follows the lead of the children's courts in the Western states, nearly all of which are created as tribunals exercising chancery jurisdiction, rather than as courts of criminal procedure. The system which

treats the children as wards of the state, to be protected, rather than as criminals, and saves them from the stigma of a conviction for crime, is unquestionably in advance of a system that treats them as criminals and deals with them, however leniently, as convicts. The stigma of being a criminal is not a help in saving a boy from a criminal career.

There has been much opposition to these laws for saving juvenile offenders. Statutes to preserve children from being dealt with as criminals have been attacked as invasions of constitutional guaranties relating to liberty, involuntary servitude, cruel and unusual punishments, due process of law, and the right to jury trial. It is not strange that criminally inclined juveniles should fight for their freedom from restraint, or be able to find lawyers who would fight for them, and probably convince themselves that they were working for the best interests of their clients. But it is fortunate that the courts have, in the main, upheld these statutes, and thus made it possible to carry on the work of saving children from crime, instead of branding and imprisoning them as criminals. A note in 18 L.R.A. (N.S.) 886, reviews the cases which have stubbornly fought against the constitutionality of these statutes, and shows that in most instances the courts have upheld the laws. On such questions as those of jury trial and due process of law it is obvious that a children's court with chancery jurisdiction escapes some of the constitutional difficulties of a criminal court in dealing with a child as a ward of the court. But the tendency at present is toward chancery rather than criminal courts for children, and the chief questions as to the constitutionality of such courts are substantially settled.

Training Schools.

Various other agencies follow or supplement the work of children's courts and the probation system, by finding them suitable homes and providing them suitable schools and other places for their care and training. In Kansas City a boys' hotel has been established, where boys who are earning their own living can live in a decent home at small cost. After using for this purpose an old residence

which would accommodate forty boys, and after the demand had become so great that more than two hundred boys were turned away, a successful campaign to raise funds for an adequate boys' hotel resulted in a subscription of \$60,000 for this purpose. Industrial schools have long been established, to which juvenile offenders have been committed, but most of them have been institutions of detention, rather than homes. A most remarkable advance toward the ideal for this kind of an institution has been accomplished at Industry, near Rochester, New York, where the plans of the superintendent, Franklin H. Briggs, have been carried out in the establishment of about thirty homes or colonies, each containing about twenty boys living with a supervisor and a matron in what closely approximates to a family home. The boys have school work for several hours a day and reasonable time for sports and recreation. In working hours they do all the work of their respective farms as well as all the housework in their homes. About 400 acres of land are used for the various farms. The boys of each home have their school work there, and work and

live separate from the other colonies, except when they meet by permission. There are no barriers to prevent running away, but the spirit of loyalty developed is such that attempts to leave are rare. This is doubtless the most successful attempt yet made to care for juvenile wards of the state in a large institution, because it approximates closely to family life, which is always recognized as the ideal condition.

The George Junior Republics, already famous, and increasing in number, are working with different methods toward the same result, and training children who would otherwise become criminals into respectable citizens.

In these and similar ways much success is already achieved in training juvenile offenders, and those who are inclined to criminal careers, into good citizenship. All these agencies have begun to lead the way toward a new era in which children will be saved from most of the conditions and influences which now breed criminals, and in which even most of those who have started wrong will be saved from criminal careers.

THE more young criminals are studied the often-
ter the question is asked as to the amount of
personal responsibility they bear for their crimes.
It is generally acknowledged that inheritance and
environment have far more to do with the production
of crime, than any other influence. But inheritance is
simply the effects of environment transmitted. We are
fond of saying, "Blood will tell," but what we should
say is, "Environment will tell whether immediate or
transmitted . . ." Because of the feeling that juvenile
crime is caused by an environment for which society
in general is responsible, we have the juvenile court as
it is to-day.—Dr. JAMES A. BRITTON.

Adoption Without Consent of Natural Parents

BY ALMOND G. SHEPARD



ALTHOUGH of ancient origin, the status of adoption was unknown at common law. It was, however, known to the civil law, and also to many ancient countries where neither the common law nor the civil law prevailed. It represents a relation similar to that of parent and child, carrying with it all the rights and privileges as well as the duties of that relation, and is usually, although not always, created with the consent of or by agreement between the adoptive parents of the one part and the natural parents or ancestor of the other. Where these agreements are not inimical to the welfare of the child concerned, or otherwise violative of public policy, they are sustained. Of late, however, in many, if not all, of the states this status has been authorized by statute to be created, under certain circumstances, without the consent and even against the consent of the natural parents, or one of them, the adoptive parents, of course, consenting thereto. It is the purpose of this article to consider the status of adoption authorized by these later statutory provisions, as affected by the failure to obtain the consent thereto of the natural parents.

Power of State to Intervene between Parent and Child.

Adoption involves a change of status primarily affecting the rights of the adopting parents, the natural parents, and the child concerned. As already stated, it is statutory, and differs widely from orders or decrees made in judicial proceedings temporarily affecting the custody of the child; as an order or decree of adoption is much broader in its scope, since it utterly and for all time termi-

nates the relation between the child and his natural parents, and establishes similar relations between the child and his adoptive parents. The natural parents are seriously affected by such an order or decree, as it deprives them not only of the right to the care and custody of the child and to his earnings, but it also severs the most sacred tie known to civilization—a tie which has been respected even in despotic countries and in ages when the general property rights of the citizen received but scant protection.

The rights of the natural parents in their children, however, are not absolute in their nature, and are subject to regulation by the state. Every child owes allegiance to the government of the country of his birth, and is entitled to the protection of that government, which should consult his welfare, comfort, and interests in regulating his custody during minority. It is the duty of the state of the child's domicil to act as *parens patriæ*, to the extent, at least, of finding a home and protector for every child within its borders. In recognition of this duty, as already stated, nearly, if not all, the states have provided by statute for the adoption of children domiciled therein, both with and without the consent of their natural parents. Ordinarily, however, the state intervenes only upon the destitution and necessity of the child. In such cases, at least, the state has the power to create a status of adoption as to infants within its borders whenever a petition for adoption is brought by a domiciled inhabitant thereof, and in some jurisdictions when brought by a nonresident, which refers to an infant therein in need of the protection of the state. Interfering, however, as they do with the rights of the natural parents, adoption proceedings should be in the nature of judicial proceedings, and

based upon actual or constructive notice to the natural parents.¹

Abandoned Child.

The general requirement as to notice to the natural parents, however, does not apply in all cases. Thus, where the natural parents have abandoned their child and left him a charge upon the state, or he has been taken from their custody by judicial proceedings on the ground of improper guardianship, unless the statute relating to adoption expressly requires notice to the natural parents; or where expressly dispensed with, notice is not necessary; the theory being that the natural parents have forfeited all their rights in the child and are no longer legally interested in orders or decrees thereafter made concerning him.²

As affecting the jurisdiction of the court, notice to the natural parents of proceedings to adopt an abandoned child, is not necessary where, by statute, notice of such proceedings is dispensed with. The fact of abandonment judicially determined is, however, essential to the jurisdiction of the court, but it is not necessary that it should be determined upon proper evidence or in accordance with the truth, as mere error in that regard will not affect the jurisdiction, the question of jurisdiction not being dependent upon whether the court rightly or wrongly determined a question of fact upon which its jurisdiction depended. Upon the fact being established that the parent has abandoned his child, he is deemed to

have thereby relinquished all parental right to be consulted in respect to the child's welfare.³ And where the proceeding to adopt is based upon the charge that the natural parents have abandoned the child concerned, the validity of the proceeding does not depend upon notice to such parents; the question of abandonment being one of fact, and if found by the court to exist, the jurisdiction is complete.⁴

But where the question was directly raised by one of the natural parents, who received no notice of adoption proceedings based upon the claim that he had abandoned his child, it was asserted that a court could not be clothed with authority to decree that a parent had deserted his child and forfeited his parental rights, without notice to him.⁵

Illegitimate Child.

As the mother of an illegitimate child has all the parental rights of other parents, she is entitled to notice of proceedings to adopt the child.⁶ Her consent to the adoption is sufficient, although at the time of giving the consent she is a minor.⁷ The consent of the father of an illegitimate child is not sufficient,⁸ even though he has previously legitimized the child.^{9%} And it is not necessary to give him notice of proceedings to adopt such a child.⁹

Where the custody of an illegitimate child was taken from the mother on the ground of her misconduct, neglect, crime, drunkenness, and other vices, after due notice to her, and she acquiesced therein for a considerable period of time, and permitted the child to be supported as a

¹ *Stearns v. Allen*, 183 Mass. 404, 97 Am. St. Rep. 441, 67 N. E. 349; *Schiltz v. Roenitz*, 86 Wis. 31, 39 Am. St. Rep. 873, 56 N. W. 194, 21 L.R.A. 483; *Sullivan v. People*, 224 Ill. 468, 79 N. E. 695; *Winans v. Luppig*, 47 N. J. Eq. 302, 20 Atl. 969; *Beatty v. Davenport*, 45 Wash. 555, 122 Am. St. Rep. 937, 88 Pac. 1109, 13 A. & E. Ann. Cas. 585; *Re Sleep*, 6 Pa. Dist. R. 256.

² *Re Larson*, 31 Hun. 539; *Omaha Water Co. v. Schamel*, 78 C. C. A. 68, 147 Fed. 504; *Von Beck v. Thomsen*, 44 App. Div. 373, 60 N. Y. Supp. 1094, affirmed without opinion, in 167 N. Y. 601, 60 N. E. 1121; *Dupre's Succession*, 116 La. 1090, 41 So. 324; *Edds's Appeal*, 137 Mass. 346; *Tiffany v. Wright*, 79 Neb. 10, 112 N. W. 311; *Leonard v. Honisfager*, 43 Ind. App. 607, 88 N. E. 91; *Egoff v. Madison County*, 170 Ind. 238, 84 N. E. 151.

³ *Parsons v. Parsons*, 101 Wis. 76, 70 Am. St. Rep. 894, 77 N. W. 147.

⁴ *Nugent v. Powell*, 4 Wyo. 173, 62 Am. St. Rep. 17, 33 Pac. 23, 20 L.R.A. 199.

⁵ *Sullivan v. People*, 224 Ill. 468, 79 N. E. 695.

⁶ *Purinton v. Jamrock*, 195 Mass. 187, 18 L.R.A.(N.S.) 927, 80 N. E. 802; *Re Sleep*, 6 Pa. Dist. R. 256.

⁷ *Re Bush*, 47 Kan. 264, 27 Pac. 1003.

⁸ *Allison v. Bryan* (Okla.) 109 Pac. 934, — L.R.A.(N.S.) —.

^{9%} *Allison v. Bryan*, 109 Pac. 934, — L.R.A.(N.S.) —.

⁹ *Gibson's Appeal*, 154 Mass. 378, 28 N. E. 296.

pauper by the commonwealth, she was held not entitled to notice of proceedings to adopt him.¹⁰

Upon the abandonment of an illegitimate child by a mother, adoption proceedings may be sustained, and the child adopted and transferred to his adoptive parents, although the mother appears in the proceedings and objects thereto.¹¹ And even as against the mother's consent, where such proceeding is authorized by statute, the father of an illegitimate child may legitimize the child and thereby obtain the right to his care and custody, even though the mother is of good moral character and is qualified to give the child a good home.¹² At first glance this proposition would seem to be opposed to the general rule relative to the adoption of children. It may, however, be reconciled on the theory of a distinction between adoption proceedings and proceedings to legitimize an illegitimate child. The latter proceedings do not deprive the mother of her rights as mother to the child, although by such proceedings the father may gain a predominant right to the care and custody of the child. This distinction is made in a case decided by the Oklahoma Court since the preparation of this article.¹³

What Amounts to Abandonment.

In view of the statutory provisions authorizing the adoption of abandoned children, it is of importance to determine the meaning of the term "abandoned" as thus employed. No attempt has been made by statute to define the term, and but few attempts so to do have been made by the courts. It has, however, been held that the statutory notion of abandonment does not necessarily imply that the parent has deserted the child or even ceased to feel any concern in its interests. It may fairly import any conduct on the part of

the parent which evidences an established purpose to forego the parental duties and relinquish the parental claims to the child, and when such an abandonment is once shown to have existed, it becomes a judicial question whether it thereafter has been terminated, or can be terminated consistently with the welfare of the child.¹⁴

But a parent cannot be said to have abandoned her child where she has made careful provision for it, and secured a home and caretaker; as an abandonment is to forego entirely, to renounce and forsake,—to leave with a view never to return.¹⁵ A few cases in which the court has determined that a child has not been abandoned within the terms of such statutes are hereafter considered as affecting the question of the conclusiveness of the order or decree of adoption; no attempt to define the term, however, is made in these cases.

Nonresidence of Parent.

The fact that the natural father is a nonresident of the state is no reason for not giving him notice, actual or constructive, of proceedings to adopt his child; and such proceedings if not based upon notice to him, or without securing his consent to the adoption, are invalid and subject to collateral attack by him for that reason.¹⁶ But notice by publication to a nonresident father is sufficient where the adoptive parents, the child, and the child's natural mother, are within the state in which the proceeding is had, and consent thereto.¹⁷

Where Parents are Divorced or Live Separate.

Ordinarily the mere fact that the parents are not living together, or are divorced, presents no tenable ground for

¹⁰ *Purinton v. Jamrock*, 195 Mass. 187, 18 L.R.A.(N.S.) 927, 80 N. E. 802.

¹¹ *Richards v. Matteson*, 8 S. D. 77, 65 N. W. 428; *Winans v. Luppie*, 47 N. J. Eq. 302, 20 Atl. 969.

¹² *Allison v. Bryan*, 21 Okla. 557, 97 Pac. 282, 18 L.R.A.(N.S.) 931.

¹³ *Allison v. Bryan*, 109 Pac. 934, — L.R.A.(N.S.) —.

¹⁴ *Winans v. Luppie*, 47 N. J. Eq. 302, 20 Atl. 969.

¹⁵ *Booth v. Van Allen*, 7 Phila. 401. And see remarks of Marshal, J., in *Parsons v. Parsons*, 101 Wis. 76.

¹⁶ *Furgeson v. Jones*, 17 Or. 204, 11 Am. St. Rep. 808, 20 Pac. 842, 3 L.R.A. 620.

¹⁷ *Stearns v. Allen*, 183 Mass. 404, 97 Am. St. Rep. 441, 67 N. E. 349.

denying to either of them the right to notice of proceedings to adopt their child, and the right to be heard therein, even though the parent having the custody of the child consents to his adoption. As regards the right to notice, it is immaterial that, by a decree of divorce, the custody of the child is given to one of the parents, who consents to the adoption. As already seen, a decree affecting the temporary custody of a child is not followed by the same consequences as is a decree of adoption. The mere fact that one of the parents is temporarily deprived of the custody of a child is no basis for the absolute and utter deprivation of all parental rights in a child, without notice or opportunity to be heard.¹⁷

But a divorce of the parents may, by a statutory provision to that effect, render unnecessary the giving of notice to the parent who, by the decree of divorce, is deprived of parental rights to the custody of the child, and who does not thereafter contribute to his support; and the adoption proceeding in such cases is sufficient, as affecting the child's right of inheritance, although not based upon the consent of or notice to the divorced parent who did not have the custody of the child.¹⁸

A divorce granted the mother on the ground of desertion by the father, together with his absence and the failure upon his part to thereafter render parental assistance or aid to the child, makes a sufficient case of desertion of both mother and child to sustain proceedings to adopt the child based merely upon the consent of the mother.¹⁹

The consent of the mother of a child to its adoption by another has been held to be necessary only when she is living with her husband, or has the custody and control of her child; and such notice is not necessary when she is living separate and apart from her husband, who has the charge and control of the child.²⁰

This doctrine was asserted by the court in a case where in one of the adoptive parents was seeking to invalidate the adoption on the ground of want of notice to the mother. It is very questionable whether the court would apply this rule where the mother herself was attacking the adoption proceedings on this ground.²¹

Conclusion of Proceeding upon Nonconsenting Parent or Stranger.

In jurisdictions where the rule prevails that notice to the natural parents of abandoned children, of proceedings for their adoption, is unnecessary, such proceedings are held not to be conclusive upon a parent not receiving notice thereof, and not appearing therein, and by a proper proceeding such parent is permitted to litigate the question of abandonment and to have reopened the order of adoption.²² A judgment of adoption based upon a finding of abandonment is not necessarily conclusive upon a parent who had no notice of the proceeding, and the proceeding may be avoided by showing the non-existence of the fact of abandonment upon which the jurisdiction depended.²³ And an order of adoption based upon the claim that a child has been abandoned and that the residence of its parents is unknown will be set aside where the claim is false, fraud having been practised upon the court in that respect.²⁴ So, an order for the adoption of a child based upon the consent of the father, without notice to the mother, on the claim that she had deserted the child, will be set aside upon her petition, where the claim of abandonment is false and is disproved by her.²⁵ Likewise adoption proceedings based upon the false claim that the mother

¹⁷ Willis v. Bell, 86 Ark. 473, 111 S. W. 808; Miller v. Higgins (Cal.) 111 Pac. 403.

¹⁸ Re Williams, 102 Cal. 70, 41 Am. St. Rep. 163, 36 Pac. 407. And see Hopkins v. Antrobus, 120 Iowa, 21, 94 N. W. 251.

¹⁹ Baker v. Strahorn, 33 Ill. App. 59.

²⁰ James v. James, 35 Wash. 655, 77 Pac. 1082.

²¹ Beatty v. Davenport, 45 Wash. 555, 122 Am. St. Rep. 937, 88 Pac. 1109, 13 A. & E. Ann. Cas. 585.

²² Parsons v. Parsons, 101 Wis. 76, 70 Am. St. Rep. 894, 77 N. W. 147; Schiltz v. Roenitz, 86 Wis. 31, 39 Am. St. Rep. 873, 56 N. W. 194, 21 L.R.A. 483; Booth v. Van Allen, 7 Phila. 401; Re Olson, 3 Ohio N. P. 304; Re Carter, 77 Kan. 765, 93 Pac. 584; Lee v. Back, 30 Ind. 148.

²³ Nugent v. Powell, 4 Wyo. 173, 62 Am. St. Rep. 17, 33 Pac. 23, 20 L.R.A. 199.

²⁴ Booth v. Van Allen, 7 Phila. 401.

²⁵ Re Olson, 3 Ohio N. P. 304.

has abandoned her child, are void as to the mother where she, at the time, was a resident of the state, and no notice of any kind was given her of the proceedings, and she had not consented thereto.²⁹

Any false allegation in the petition of the adoptive parent that the natural parents have abandoned the child is a fraud upon the court, and a decree of adoption based upon such a petition will have no effect upon the rights of the natural parents, who had no notice thereof.³⁰ And the mother of a child of whose custody she has been unlawfully deprived by the father, may collaterally attack adoption proceedings based upon the consent of the father and the false claim that the mother had abandoned the child, although she was not a resident of the state, where no notice of the adoption proceeding was given her and her residence was known to the parties to the proceeding.³¹

So, where a father, after a quarrel with his wife, left her and went to another state, where he obtained employment and from whence he continued to support his wife and family, his act did not amount to abandonment of his child, and hence the adoption of the child based upon the consent of the mother and the claim of abandonment by the father was no bar to habeas corpus proceedings by the father for the custody of the child.³²

A stranger to the proceeding may also collaterally attack the judgment of adoption where it is invalid, because no notice of the proceeding was given the natural parents and they did not appear therein or consent thereto.³¹

Parties to the Proceedings and Their Privies.

But although such proceedings may, on the ground of failure to obtain the consent of, or give notice to the natural

parents, be successfully attacked by the natural parents, or even a stranger, it is, however, different as to parties to the proceedings and also their heirs, privies, or personal representatives, none of whom are entitled to attack a judgment of adoption because based upon proceedings of which no notice, actual or constructive, was given the natural parents.³³

Proceedings to avoid a judgment of adoption on the ground that the child was not an abandoned child, the parents having received no notice of the proceeding, are of an equitable nature, and after the lapse of many years during which time the status of the child has been recognized as legally fixed by the judgment of a court of competent jurisdiction by all the parties to the proceeding, neither the parties nor their privies are entitled to apply to the equitable powers of the court to have declared void the proceedings, for failure to give notice to the natural parents.³³

Conclusion.

In conclusion it may be said that adoption statutes are humane provisions intended primarily for the protection and well-being of helpless and homeless children. To effectuate this laudable object, the provisions should be liberally construed, and the parties thereto and their privies should be denied the right to collaterally assail the proceeding. When, however, as is frequently the case, the attempt is made to pervert these benign provisions to a purpose foreign to their object, and to use them to sever the relation of parent and child, generally to intrench one of the parents or other relative in their possession and custody, the statute should not receive the same liberal construction, but should be so construed as to preserve to each parent the right to be heard in a proceeding so materially affecting them and their offspring.

²⁹ Re Carter, 77 Kan. 765, 93 Pac. 584.

³⁰ Lee v. Back, 30 Ind. 148.

³¹ Beatty v. Davenport, 45 Wash. 555, 122 Am. St. Rep. 937, 88 Pac. 1109, 13 A. & E. Ann. Cas. 585.

³² People ex rel. Cornelius v. Callan, 124 N. Y. Supp. 1074.

³³ Taber v. Douglass, 101 Me. 363, 64 Atl. 653; Beatty v. Davenport, 45 Wash. 555, 122 Am. St. Rep. 937, 88 Pac. 1109, 13 A. & E. Ann. Cas. 585.

³³ Woodward's Appeal, 81 Conn. 152, 70 Atl. 453; Sullivan v. People, 224 Ill. 468, 79 N. E. 695; Ross v. Ross, 129 Mass. 243, 37 Am. Rep. 321; Coleman v. Coleman, 81 Ark. 7, 98 S. W. 733; Nugent v. Powell, 4 Wyo. 173, 62 Am. St. Rep. 17, 33 Pac. 23, 20 L.R.A. 199.

³³ Parsons v. Parsons, 101 Wis. 76, 70 Am. St. Rep. 894, 77 N. W. 147.

To take a child from his parents and consign him absolutely to the care and control of another is a serious step for a court to take, a step which should never be taken except after a full and complete hearing, and then only for clearly good reasons. Except in such cases the necessities and well-being of the social state do not require the severing of the parental tie, and is more to be conserved by protecting and fostering it. For, after all, no one is as competent to understand

a child as are his natural parents; no one as well qualified to aid him in overcoming his atavistic tendencies. With a better understanding of his weaknesses, and greater patience because of such understanding, and a greater affection arising from the parental relation, the natural parents, unless clearly undeserving, are more apt than adoptive parents to be successful in rearing children to good manhood and womanhood.

“THE children are the seed corn of the nation, and it was Jefferson Davis himself who announced to his compeers, ‘We must not grind the seed corn.’ The state has a right in this matter, because the interests of the state are concerned. Of course, you know that amongst the Greeks the idea of the state took the very first importance in fact. Among the Spartans that position, that the interests of the state were absolutely supreme, took such a definite and sovereign position that they assumed the right even to destroy defective children. In our democracy we do not take so radical a view, but still the same principle holds. It is the opinion of the best thinkers since the beginning of government, that the state has a right to perpetuate its own life, and in saving the children from undue work,—work coming upon them at a time when they are simply developing to become citizens,—the state is only taking that right which has been accorded to her by the best thinkers of the race.”—EDWIN MARKHAM.

The Editor's Comments

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Edited by Asa W. Russell.

Surgery as an Aid to Law and Morals.

IT is now a commonplace of medical and reform literature, says the Record Herald, that much truancy and juvenile delinquency may be due not to "depravity," but to some physical or mental defect. A school boy may be inattentive because of an abnormal growth, of difficulty in breathing, or hookworm poisoning. A child may seem "vicious" when it is only morally or physically defective, in need of cure, proper feeding, surgical treatment.

In Chicago they have, in connection with the juvenile court, a limited medical service for the examination of the physical and mental traits of delinquents. The experiment has not been tried suf-

ficiently to warrant large conclusions, but in time valuable data will be collected and additional knowledge gained as to the relation between crime and inherited or acquired defects in body and mind.

It is interesting to know that in New York the subject of surgical or medical treatment as a cure for truancy and delinquency is now receiving due attention, and that benevolent persons are prepared to equip a laboratory, clinic, and even a farm in the country, for the proper handling, after examination and "first aid," of little patients requiring elaborate care.

Recreants brought to the children's court in New York city whose delinquency is attributed to physical causes will be examined by experts. Surgery will be employed for minor afflictions, with the consent of the parents and the presiding officer of the children's court.

"It should be understood that surgical work is a detail of the plans," says Dr. Schlapp. "Medicine, rather than surgery, and healthful surroundings while the patient is under treatment, will be depended upon to effect cures. The consent of all concerned being secured, a patient suffering from growths in the nose which obstruct proper breathing, enlarged or inflamed glands in the throat, or minor ailments that oftenest are the results of inherited taints, will be recommended for surgical treatment."

"If children having such physical characteristics aren't taken care of," say the officers of the children's society, "they are apt to develop into habitual criminals. The examinations are to be most conservative, and no operations are to be undertaken except in cases where they can reasonably be expected to cure mental deficiency."

Surgical operations were once facetiously suggested as a means of putting a sense of humor into dull people. The idea of surgical operations to put the moral sense or the "will to do good" into erring children is neither paradoxical nor humorous.

But there are accidental criminals, the victims of disease and injury. If sci-

ence by cure or operation can restore such victims to sanity and morality, they should have their liberty upon assurance by competent authority of their entire restoration. A thief whom an operation can remake a respectable man should not expiate his misfortune by a term in prison. Science teaches charity and also sense.

More Law than Restraint.

STUDENTS of sociology, says the *Haverhill Gazette*, have become convinced of the existence of one stumbling-block. There is too much law for the boy. If the youngster, in a city of moderate size, cuts any capers due to juvenile effervescence and a spirit of mischief, rather than to criminal intent, the chances are that he will be dragged into court.

There has been a wide departure from the practices of the immediate past, when a youngster was kept busy learning the fundamentals of a profession or a trade. The change has been to the disadvantage of the country. We have evolved to the point where the boy is given no opportunity to "effervesce" without running the risk of arrest. There should be more restraint and less law.

The *Duluth Tribune* cites such an instance, where a boy was placed "on probation," with a charge of disorderly conduct written against him, because he threw a snowball into the ear of a grouchy dyspeptic who had involuntarily offered himself as a target for the youngster's marksmanship. In the opinion of a famous judge of juveniles the great proportion of juvenile offenses can be traced to one of two things:

(1) Inability of parents to meet their responsibilities.

(2) Inadequacy of society and the public school system to fulfil requirements.

The trouble with the boys is that they have no steady occupation to confine their activities. They are, in some respect, like nine tenths of the women who parade their troubles in the divorce courts. They have no responsibilities. Anyone who will take the trouble to round up the boys of any city after school hours will find a large proportion of them amid sur-

roundings that are detrimental. Perhaps they will be in a pool room; they may be loitering on the streets; they may assemble under dominant leadership in a vacant lot planning a diversion that will carry them close to a violation of the law. In most of the cases the boys are not what they ought to be, and they are where they ought not to be.

One of the worst criticisms of the present age, with all its boasted progress, is that it does not properly take care of its boys. It differs radically from the custom of a generation ago, when the "apprentice system" was in vogue. Apprenticing a boy did not necessarily mean harm to him. In a majority of cases, it benefited him. It forced him to learn a trade and at the same time it kept him out of mischief.

The Rights of Children.

JUDGE E. E. Porterfield, who presides over the juvenile court in Kansas City, has taken steps, according to the *St. Louis Star*, to protect the rights of children involved in suits instituted by parents for divorce.

The announcement is made by Judge Porterfield that he will appoint a competent attorney who will represent the children of litigants in divorce courts. The attorney, through investigation, will determine the manner in which the children have been provided for, and methods for their protection, before the cases are called by the trial judges. It is expected in this manner that courts will obtain much important information, now usually absent, in the suits of mismatched couples.

This plan was adopted by Judge Porterfield after an experience as judge of the juvenile court in which some of his most pathetic duties have been in connection with children practically abandoned because of the separation of their parents. It is said that the six judges of the Kansas City circuit courts approve the plan proposed, and will co-operate to the end that it may, so far as possible, succeed. Some of them say there will, through its operation, be a heavy decrease in the number of divorces granted. The Kansas City idea will be watched with interest.



Banks—power to accept trust deed—who may object.—Mr. Justice Hughes' first judicial utterance from the bench of the Supreme Court of the United States was on November 7, 1910, in the case of *Kerfoot v. Farmers' & Merchants' Bank*, Adv. S. U. S. 1910, p. 14, 31 Sup. Ct. Rep. 14, where, speaking for the court, he laid down the rule that the want of authority of a national bank to accept a conveyance of real property in trust is not available to private persons as a ground for avoiding the deed, but that the United States alone may complain. The new justice's opinion is clear and concise, and affords ground for the belief that he will prove a valuable and efficient member of that august tribunal, the Federal Supreme Court.

Bank—authority of cashier—promise to maker of note.—It is a general rule recognized by the great majority of the cases, that the president or cashier or any other similar executive officer of a bank has no authority, simply by virtue of his office, to bind his bank by an agreement made with the maker or indorsers of commercial paper payable to the bank, that their liability on such paper will not be enforced. The rule applies whether the agreement is made before the paper has been signed, or after.

In conformity with this rule it was held in the recent case of *State Bank v. Forsyth* (Mont.) 108 Pac. 914, annotated in 28 L.R.A.(N.S.) 501, that the cashier of a bank has no authority to bind the bank by his promise that one signing paper without consideration, to replace that of the cashier, to enable the bank to pass inspection, shall not be held liable thereon, and one signing such paper is chargeable with notice of such

want of authority, and acts at his peril in relying on the promise.

Bank—authority of cashier—qualified indorsement.—The few reported cases upon the subject hold that a bank president or cashier, merely by virtue of his office, has no power to bind the bank by an agreement that the liability of parties to commercial paper shall be different from that imported upon its face.

The recent case of *First Nat. Bank v. Lowther-Kaufman Oil & Coal Co.* 66 W. Va. 505, 66 S. E. 713, annotated in 28 L.R.A.(N.S.) 511, holds, in agreement with the earlier authorities, that a cashier has no authority, simply by virtue of his office, to bind his bank by an agreement made with the indorsers on a promissory note, and unknown to the directors, to the effect that each of said indorsers shall be liable only for a certain proportion of the debt; and it matters not whether such contract relates to original notes presented for discount, or to notes taken either in payment or in renewal, or pre-existing notes.

Carriers—passenger—visiting depot to leave baggage.—There is very little authority upon the rights of one going to a railroad station to deposit baggage. The recent Mississippi case of *Metcalf v. Yazoo & M. Valley R. Co.* 52 So. 355, annotated in 28 L.R.A.(N.S.) 311, holds that one who goes to a railroad station a few minutes before the arrival of his train is entitled to the rights of a passenger, although his intention is merely to leave his hand baggage and depart again to transact some personal business before train time, where by statute the railroad company is required to keep its station open at least an hour before the arrival

of trains; and he may therefore hold the railroad company liable for an injury due to the unsafe condition of the premises.

Death—presumption—absence—search.—As declared in the note appended to *Modern Woodmen v. Gerdorn*, 2 L.R.A. (N.S.) 809, the weight of modern authority supports the rule that diligent inquiry for a missing person is necessary to raise a presumption of his death from seven years' absence.

The recent case of *Miller v. Sovereign Camp W. W.* 140 Wis. 505, 122 N. W. 1126, annotated in 28 L.R.A. (N.S.) 178, follows, however, the earlier rule holding proof of diligent search and inquiry is not required to establish the presumption of death when a person has absented himself from his home or place of residence for seven years.

But in *Kennedy v. Modern Woodmen*, 243 Ill. 560, 90 N. E. 1084, 28 L.R.A. (N.S.) 181, it is determined that mere failure of the relatives of one who disappeared without explanation, and remained absent from home for more than seven years, to follow up rumors that he had been seen in different places, and institute diligent inquiry in such places for him, is not sufficient to overcome the presumption of death arising from such absence. This case further holds that the relatives of one who disappeared without explanation, and has remained absent from home for more than seven years, are not bound to follow up intelligence of a tangible and definite character as to his whereabouts to avoid its rebutting the presumption of death, if the source from which it comes is so corrupt and unreliable as to destroy its value.

The guiding principle of the decision seems to be that there must be some search for the missing person before the presumption of death from absence can arise, though no rule is laid down as to the extent to which the inquiries must be carried.

Executor—overpayment—right to recover.

—That an executor who, under the mistaken belief that the estate is solvent, pays a claim in full, may, upon ascertain-

ing the fact of its insolvency, recover the excess over the portion equitably due the claimant, is held in *Woodruff v. H. B. Claflin Co.* 198 N. Y. 470, 91 N. E. 1103. That this rule is supported by the weight of judicial authority is apparent from a review of the decisions, which is appended to the *Woodruff Case* in 28 L.R.A. (N.S.) 440.

Injunction—municipality—extinguishment of fire.—That a mandatory injunction will not be issued to compel a municipal corporation to extinguish a fire in a mine within its limits, which is on private property and was started without any wrongdoing on its part, is held in *Cameron v. Carbondale*, 227 Pa. 473, 76 Atl. 198, 28 L.R.A. (N.S.) 494.

No other case has been found involving the duty of a municipality to extinguish a mine fire within its corporate limits. The case of *McCabe v. Watt*, growing out of the same fire, in which the court refused to compel the mine owners to extinguish the fire, is reported in 24 L.R.A. (N.S.) 274.

Insurance—conspiracy to destroy property—effect.—The question whether a conspiracy to burn insured property, in which the owner takes part, unaccompanied by an overt act in furtherance thereof, would defeat recovery for a loss of the insured premises by a fire not the result of the conspiracy, seems to have been considered for the first time in *Amper-sand Hotel Co. v. Home Ins. Co.* 198 N. Y. 495, 91 N. E. 1099, 28 L.R.A. (N.S.) 218, holding that a conspiracy, unaccompanied by an overt act, to burn insured property, in which the owner joins, does not, although it is in process of accomplishment at the time the property is destroyed by fire, avoid the policy, under provisions that the policy shall be void in case of any fraud touching any matter relating to the subject of the insurance, or if the hazard is increased by any means within the control or knowledge of the insured.

Insurance—appraisers—failure to agree—action—condition precedent.—The standard form of fire insurance policy in general

use in this country provides that where the insurer and insured are unable to agree as to the amount of loss, it shall be determined by arbitration, and that no action shall be maintained on the policy until an award has been made by the arbitrators; and the question often arises as to the effect of a failure to carry out this provision. This subject is exhaustively treated in the note to *Graham v. German American Ins. Co.* 15 L.R.A. (N.S.) 1055.

The necessity of arbitration as a condition precedent to an action on insurance policy came before the courts for consideration in the recent case of *German-American Ins. Co. v. Jerrils*, 82 Kan. 320, 108 Pac. 114, holding that under a fire insurance policy providing that, in the event of a disagreement as to the amount of the loss, each party shall appoint an appraiser, and the two appraisers shall select an umpire, and appraise the loss, and that no action shall be maintained on the policy until such appraisal has been made, the insured discharges his obligation in that respect when he appoints an appraiser in good faith; and where the two appraisers fail to agree upon an umpire, and the appraisal fails without the fault of the insured, he is not required to propose the selection of other appraisers, but may maintain an action upon the policy.

The recent authorities upon the question are included in the note which accompanies the report of this case in 28 L.R.A. (N.S.) 104.

Interest—unliquidated damages—delay in transportation of live stock.—Damages recovered in an action *ex delicto* against a carrier, for injuries to, and delay in the transportation of, live stock, are held in *Fell v. Union P. R. Co.* 32 Utah, 101, 88 Pac. 1003, to draw interest, at least from the time of delivery.

This case is accompanied in 28 L.R.A. (N.S.) 1, by an exhaustive note collating the decisions upon the right to interest on unliquidated damages.

Judgment—tax proceeding—nickname—validity.—The novel question of the validity of a judgment based upon the publi-

cation of process in which the defendant was designated not by his Christian name, but by a nickname, was considered in *Ohlman v. Clarkson Sawmill Co.* 222 Mo. 62, 120 S. W. 1155, 28 L.R.A. (N.S.) 432, holding that no valid judgment can be entered in a proceeding to enforce unpaid taxes against one whose Christian name is Michael, upon a constructive service of process against him by the name of Mike, where there is nothing to show that he ever answered to or tolerated such name.

Libel—words defamatory of clergymen.—Where derogatory words are uttered concerning clergymen, which tend to prove them unfit to continue their calling, the authorities are agreed that they are actionable in themselves, without proof of damage.

This rule was applied in the recent Minnesota case of *Cole v. Millspaugh*, 126 N. W. 626, annotated in 28 L.R.A. (N.S.) 152, holding that it is libelous *per se* to write of a clergyman, an applicant for a pulpit, "I would not have anything to do with him, or touch him with a 10-foot pole," if under the circumstances the words used would expose the person written of to hatred or contempt, or injury in his business or occupation.

License—vending machine—discrimination—validity.—The validity of a license tax on automatic vending machines seems to have been considered for the first time in the recent Washington case of *Seattle v. Dencker*, 108 Pac. 1086, 28 L.R.A. (N.S.) 446, holding that a municipal corporation cannot impose a license tax on automatic vending machines when no tax is placed upon merchants selling the same articles as are sold by the machine, without its aid, where no police supervision or regulation of the machine is necessary.

Limitation of actions—conveyance of mortgaged property—payment by mortgagor.—It is held in the recent Oregon case of *Kaiser v. Idleman*, 108 Pac. 193, that the running of the statute of limitations upon a mortgage debt will be arrested by a payment by the mortgagor before the

action is barred, although he has transferred the property to a stranger, where, under the statute, a payment continues and keeps alive the original promise.

According to the note which accompanies this case in 28 L.R.A.(N.S.) 169, it seems to be universally accepted that a new promise, part payment, or acknowledgment of the debt on the part of a mortgagor, before a conveyance by him of the property, or before the attachment of a lien, will have the effect of tolling the statute of limitations, not only as against himself, but also as against his grantee, or other person holding an interest in the property through him, whether such part payment or new promise is made before or after the debt is barred.

Mandamus — enforcement of law.—The weight of authority seems to hold that public officers cannot be compelled by mandamus to enforce the liquor laws, since this would involve the ordering of a course of action which is, to some extent, discretionary, and which it would be difficult, if not impossible, for the courts to enforce.

This is the view taken in *People ex rel. Bartlett v. Busse*, 238 Ill. 593, 87 N. E. 840, annotated in 28 L.R.A.(N.S.) 246, holding that mandamus will not lie to compel the mayor of a city to enforce the Sunday closing law against a saloon keeper.

Master and servant—fellow servants—domestic servant and employer's child.—The question whether a child of the employer is a fellow servant of an employee was presented to the courts, apparently for the first time, in *Waxham v. Fink*, 86 Neb. 180, 125 N. W. 145, 28 L.R.A.(N.S.) 367, holding that a woman of mature age who was employed as housekeeper and in general charge of the housework, and was injured by an accident caused by the negligence of the son of her employer, a boy of fourteen years, who was also performing ordinary household service, in the absence of his father, but pursuant to the general directions of his father to perform such service, was a fellow servant of the boy, and

that she could not recover from her employer damages so sustained.

Master and servant—employment by month—loss of time through sickness—recovery.—That a servant employed by the month can recover no compensation for the time during which he was prevented from performing services by sickness is held in the recent Washington case of *MacFarlane v. Allan-Pfeiffer Chemical Co.* 109 Pac. 604, which is accompanied in 28 L.R.A. (N.S.) 314, by an exhaustive note presenting the decisions dealing with the right of a servant to compensation in case of incomplete performance of his contract caused by physical disability.

Master and servant—injury—notice—service by mail.—Service, by mail, of notice required by employers' liability acts, appears to be a question which, as yet, has had little attention from the courts.

In *Hurley v. Olcott*, 198 N. Y. 132, 91 N. E. 270, 28 L.R.A.(N.S.) 238, it is held that failure of the employer to receive the notice is immaterial where a statute providing for service of notice of injury for which the master is to be held liable states that it may be served by post, by letter addressed to the person on whom it is to be served.

Municipal corporation — nuisance — cattle yards—right to prohibit.—The question whether the power ordinarily vested in municipal corporations of declaring what shall constitute a nuisance, and abating the same, will authorize the municipality to prohibit stock yards within its limits, regardless of the condition in which they are kept, was considered apparently for the first time in the recent South Dakota case of *Colton v. South Dakota Central Land Co.* 126 N. W. 507, 28 L.R.A.(N.S.) 122, holding that a municipal corporation having authority to declare what shall constitute a nuisance, and abate the same, may prevent the maintenance of ordinary railway cattle yards in its residence district.

Negligence—unsafe premises—third rail.—An electric railway company main-

taining an unprotected third rail carrying a heavy current, on its right of way, at a point where the right of way is securely fenced against intruders, is held not liable in *Riedel v. West Jersey & S. R. Co.* 177 Fed. 374, for injury to a child who wanders through a gate maintained in the fence by an abutting property owner, and comes in contact with such rail, although there is nothing to distinguish the dangerous rail from the harmless ones.

The liability of an electric railway for injury to a trespasser or licensee from an exposed third rail, as appears by the note appended to this decision in 28 L.R.A. (N.S.) 98, seems to have received judicial consideration in but three earlier cases.

Physician—use of electricity—negligence.—The rule governing the liability for injuries resulting from the use of the X-ray is the same as in other actions for malpractice, and the criterion is whether such reasonable care and skill has been exercised as is usually given by physicians and surgeons in good standing in the locality.

In *Frisk v. Cannon*, 110 Minn. 438, 126 N. W. 67, annotated in 28 L.R.A. (N.S.) 262, it appeared that plaintiff was placed by one of defendant physicians on an insulated platform, a conical cap was put above and in front of her head, and electricity was caused to be discharged by a static machine through the cap upon plaintiff's head. Defendant left the room. No attendant was present. Plaintiff's head was seriously burned. It was held that actionable negligence on the part of defendant was shown.

Railroad—crossing—injury—negligence.—The rule as to the right of recovery for an injury received on a railroad crossing while attempting to rescue property seems to be that one is entitled to run some risk in attempting to save his property from damage, and that he may recover for any injury received in so doing, provided he has not recklessly exposed himself to danger.

This rule was extended in *Campbell v. Chicago G. W. R. Co.* 108 Minn. 104,

121 N. W. 429, annotated in 28 L.R.A. (N.S.) 346, to include a person who went upon the crossing to rescue property with whose presence on the track he had no original connection.

In that case plaintiff saw a horse and wagon without a driver approach the railroad tracks at a constantly used crossing of a busy city street. He took hold of the reins suspended from the top of the vehicle. Defendant's railroad train, while the engine whistle was being blown and the train was running at the rate of 35 miles an hour, came suddenly into view around a sharp curve some 200 feet away. The horse became frightened, plunged forward, and jerked plaintiff on the track. The oncoming train struck him, and produced the injuries for which the jury awarded damages. Its verdict is sustained, despite objection based on the absence of proof of defendant's negligence, and on plaintiff's contributory negligence.

Railroad—unsafe crossing—deviation—injury—liability.—The question of a railroad company's liability for an injury to a traveler while trying to cross its tracks at a place other than the regular crossing, because the latter is out of repair, was presented to the courts for adjudication, apparently for the first time, in the recent Washington case of *Moore v. Great Northern R. Co.* 107 Pac. 852, 28 L.R.A. (N.S.) 410, holding that a railroad company is not liable for injury to one who voluntarily turns aside from a crossing over the track, left unsafe by the company, and attempts to make the crossing over the unprotected rails, and is thrown from his wagon by the unevenness of the crossing place.

Slander—vilification—right to damages.—The recent Louisiana case of *Carrick v. Joachim*, 52 So. 173, annotated in 28 L.R.A. (N.S.) 85, holds that where one man (and he much the heavier of the two), without provocation, assaults another upon the street, and, in a voice which is heard half a square away, applies to him the vilest epithets in the English language, the injured party ought not to be denied such compensation for the wrong done him as money can afford.

There are not many cases in which the question of the application of gross and vile epithets which inveigh against a man's genealogy or which impute immorality to him personally, has been considered. What judicial utterances there are on the question incline to the view that there is no right of action for the use of epithets, however vile, unless it appears that there was an intention to make a charge against the plaintiff, which, if made in language in itself unobjectionable, would have been defamatory. Indeed, it has been said that one who utters contumelious epithets does so in a state of mental excitement which negatives any intention to make a defamatory charge.

Surety—change of contract—liability.—The effect upon a bond conditioned for the fidelity of an employee or agent, of a change in the latter's field of operation or the nature of his duties, was considered in the recent Utah case of *Daly v. Old*, 99 Pac. 460, annotated in 28 L.R.A. (N.S.) 463, holding that a change of the state in which a solicitor of life insurance is to work, after the execution of a bond conditioned for the faithful performance of his duties, will not, although it enlarges his responsibilities, release the surety, where the bond provides that it shall not be annulled or revoked without the consent of the obligee, but shall remain in force, whether under the agent's existing appointment or any future one, and the agency contract provides that the agent shall have authority in the original state, and shall give a satisfactory bond which shall hold good "under this or any future agreement."

Unfair tradename of organization—protection.—Although the question has received little judicial discussion, the right of the members of an organization, or, more

properly speaking, of the public, to protection against the use by others of a name to which the united efforts of such members have given a peculiar significance, seems to have been recognized wherever the question has arisen in such a form as definitely to require the predication of such right.

The recent Michigan case of *Finney's Orchestra v. Finney's Famous Orchestra*, 126 N. W. 198, annotated in 28 L.R.A. (N.S.) 458, holds in conformity with this view that a name like "Finney's Orchestra" may be protected against unfair competition by those whose efforts have made it valuable, although the one who originated the organization and gave it his name is dead.

Will—beneficiary as draftsman—undue influence.—It is held in *Kirby v. Sellards*, 82 Kan. 291, 108 Pac. 73, that the fact that a will is written by the daughter of the testator, who is named as the executrix, but is not otherwise favored over the other children, does not raise a presumption of undue influence.

This case is accompanied in 28 L.R.A. (N.S.) 270, by an exhaustive note discussing the numerous authorities treating of the nature, character, and force of the implication attributable to the circumstance that one who drafted or was otherwise active in the preparation and execution of a will receives a benefit thereunder, both where it stands alone and where it exists in conjunction with other circumstances, notably the existence of a confidential relation between the testator and such beneficiary; the circumstances which add force to such implication; its effect, if any, upon the burden of proof; the circumstances under which it becomes necessary to introduce evidence to repel it; and the amount and character of proof necessary to that end.





Child labor in Europe.—Repulsive conditions in child labor in continental Europe are described in a special report published in the latest issue of the bulletin of the United States Bureau of Labor, made public recently. The report, which covers more than four hundred pages of the bulletin, was made by Dr. C. W. A. Veditz, a professor of sociology in George Washington University, who made an investigation in Austria, Belgium, France, Germany, Switzerland, and Italy. He gathered his *data* from official records and sources of information.

Child labor in Belgium is not paid at all; children in Austria begin work before six years of age; child laborers in France are drilled to disappear through trapdoors at the approach of inspectors, and there is a general indifferent enforcement of the child labor laws. Employers find it more profitable to pay the nominal fines imposed, than to obey the regulations.

In Austria, one fourth of the child workers are employed in establishments that are inspected annually. The force is so inadequate that it would take fifty-nine years to visit once every establishment subject to the labor laws. The majority of the smaller concerns are never visited. Child labor in Austria is not regulated in workshops, in household industries, or in commercial establishments. Hence the factory laws, so far as they have reduced child labor at all, have simply driven it out of the factories into the homes of the workers, into small workshops, and into establishments lying outside the scope of the labor laws.

A recent official investigation disclosed the fact that about half of the children began work before they were eight years of age, while a very large num-

ber began before they were six years old. Their compensation varied all the way from food and certain articles of clothing to \$14 a year for those in agricultural occupations. A large proportion received wages of from 50 cents to \$1.50 a month. Those employed in saloons and bowling alleys usually averaged 4 cents an hour, plus free beer, sometimes left over by guests.

The Belgian child-labor law provides that ignorance of the law is a sufficient defense of proved violations. Many violations escape detection, the report says. The bulk of the establishments are visited only once a year. Only a fractional part of the cases of detected violations are brought to trial, and in these cases the fines imposed average about \$1. Specific instances are quoted in which employers frankly declare it to be much cheaper to violate the law and pay the fine than to comply with it.

One fourth of the child laborers in Belgium under sixteen years of age either get no money wages at all, or receive less than 10 cents a day; more than one half of them receive between 10 and 29 cents a day, and less than one fifth receive 30 cents or more.

In France, the investigator says, the enactment of new labor laws has proceeded much more rapidly than provisions for their enforcement. If every establishment subject to the laws were to be inspected once a year, that would mean each inspector would have to visit 4,265 concerns. At the end of 1908 there were still 173,136 establishments subject to the law that had never been visited, even once, by an inspector. In fact, in 1908 alone, 383,873 establishments were not visited.

Although the French law provides that working children must be subjected to a

physical examination if the work they do is apt to prove injurious to their health or their physical development, the provision is admitted by the inspectors to be wholly ignored. Among the most frequent and most flagrant violators of the rules governing child labor are religious and charitable institutions, such as orphanages, says the report, in which the children usually get no wages for their labor, are worked overtime and under conditions violating not only the law, but the ordinary rules of hygiene, and in which limitable provision is frequently made for their education.

In France official age certificates are often forged or altered, and a traffic has sprung up, especially among the Italian children imported into France in droves for employment mainly in glass works, brickyards, and as chimney sweeps and bootblacks.

French court decisions have made it next to impossible to enforce the prohibition of child labor at night, according to the almost unanimous testimony of the inspectors. The law governing the employment of young children in theatrical performances is also a dead letter.

Germany's Industrial Code, regulating the employment of child laborers, was recognized as having not so much abolished child labor, as having forced it out of the factories into home industry. A small proportion of the employers found violating the law receive punishment. Although in 1908, for instance, 15,099 establishments illegally employed persons under sixteen years of age, and the total number of offenses was 20,817, only 1,597 persons were punished.

In Italy the whole institution of factory inspection is of so recent date, and as yet so poorly organized, that it may be said to be nonexistent throughout a large part of the Kingdom.

In Switzerland, whose factory law of 1877 was regarded as radical at the time of its enactment, conditions do not differ very essentially from those prevailing in Germany and in France. Regulation of labor in factories has unquestionably led, in many industries, to the development of home production as opposed to factory production.

The report as a whole leaves the im-

pression that child-labor laws are exceedingly difficult of enforcement, and that the European public is too prone to regard legislation alone as a cure for alleged social evils. It is also claimed, in the report, that the devices employed to circumvent the law are much the same the world over.

The conclusion is that child-labor laws abroad are in many essential respects poorly enforced, and that the penalties imposed for violations are ridiculously small and of practically no deterrent value. The report gives data indicating that in most of those countries it would be a physical impossibility for the inspectors to do more than a fractional part of their work, or to do that part thoroughly, and that the courts are astoundingly lenient with offenders against labor laws.

Probation for Wayward Mothers.—Look a moment at a typical case, says the California Weekly. Here is a woman who has been married five or six years and has a daughter, say, four years old. The woman is fond of a gay life, she has moved to California from an eastern community and the absence of old acquaintances removes the restraints of old days. Her husband is away from home a good deal, sometimes in the evenings. She gets acquainted with fast people, takes a drink now and then, drifts into worse associations, gets caught at the unforgivable sin, and her husband gets a divorce. The chances are that the court will give her the child. The fast life now continues as a matter of course. The child is neglected or, even worse, is made to share in scenes that would disgust the coldest heart. The woman becomes an habitual drunkard, and, finally, the Society for the Prevention of Cruelty to Children hears of the case, and the woman is arrested.

Here is the practical solution of the problem offered by Miss Katherine Felton, of the Associated Charities:

Make the mother in the typical case described above an offender against the laws. Establish a system of probation for such offenders, and make the agent of the child-placing agency the probation officer in charge of the case. Require

the mother to report periodically to this probation officer, and warn her to mend her ways. Then present to her two alternatives—either she must earn the right to take back her child by decent living and productive industry, or have all legal claim upon the child removed by a final decree of the court. Give the woman a fair length of time—say one year—in which to stay on probation and prove her right to the child, or to prove finally and conclusively her incapacity to rear it properly.

The effect of the proposed plan upon the child itself is salutary. In the first place, the child is at once and completely removed from the baneful influence of its mother. It can be boarded out under conditions that insure its proper care until the mother's probationary term expires. If the mother profits by the probation and the child is restored to her, it is restored to a woman who has begun, at least, to live right, and who is likely to continue to live so because she has had a chastening experience of the power of the law and the intention of the courts to compel her to live properly while the child is in her hands.

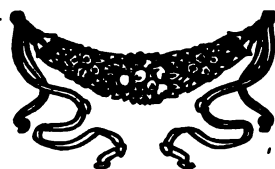
If the probationary term be a failure, the child is finally and forever removed from its mother's influence.

School Attendance.—By the review of recent legislation relating to public education, prepared by Professor Edward C. Elliott, of the University of Wisconsin, for the New York State Education Department Bulletin, it appears that the last biennial instalment of the long-continued story of compulsory education, child labor, and juvenile delinquency legislation, contains numerous paragraphs that justify encouragement in the belief that, at no distant day, all of the members of the American Federal commonwealth will succeed in guarantying to their children a minimum of education, a just protection from an overload

of labor, and a safeguard from the influences of nonsocial agencies.

Generally speaking, the tendencies in the Northern and Western states as regards school attendance have been to widen the age limitations so as to include the period eight to sixteen, to increase the length of the period of annual school attendance, to require certain degrees of educational advancement as an essential condition for exemption from attendance, to give to school officials far greater authority in the determination of what constitutes satisfactory compliance with the law, and to bring defective children (deaf, dumb, blind, and feeble-minded) within the scope of operation of the compulsory attendance requirements. The more important of these new attendance regulations are: Arizona (1907, chap. 67), Idaho (1907, p. 248), Illinois (1907, p. 520), Kansas (1907, chap. 317), Kentucky (1908, chap. 68), Michigan (1907, chaps. 48, 74), Minnesota (1907, chap. 407), Nebraska (1907, chap. 131), New Jersey (1908, chap. 231), New York (1907, chaps. 103, 585), North Dakota (1907, chap. 98), Oregon (1907 chap. 79), Pennsylvania (1907, chaps. 237, 241), South Dakota (1907, chap. 137), Vermont (1906, chaps. 52, 59), Washington (1907, chap. 240), Wisconsin (1907, chaps. 108, 128, 446) and Wyoming (1907 chap. 93). The child labor law for the District of Columbia, United States (1908, chap. 209, May 28) may be considered as a long-delayed step of progress.

The results in the Southern states were largely in the direction of securing initial legal recognition of the principle of compulsory school attendance. Delaware (1907, chap. 121), Missouri (1907, p. 428), North Carolina (1907, chap. 894), Tennessee (1907, chaps. 603, 604), Oklahoma (1908, chap. 34, art. I), and Virginia (1908, chap. 364) passed coercive measures of varying potential effectiveness.





State Bar Associations Meetings.

The annual meeting of the Connecticut Bar Association will be held at Bridgeport during the coming month of January, 1911.

The next meeting of the South Dakota Bar Association will be held at Pierre about January 15, 1911.

It is announced that the next meeting of the Kansas Bar Association will be held at Topeka on January 11 and 12.

The Maine Bar Association will meet in annual session at Augusta, on January 11.

The next meeting of the New York Bar Association will be held at Syracuse on January 19 and 20. United States Senator Elihu Root will preside. The principal address will be by Attorney General Wickersham.

Kansas Bar Association.

D. A. Valentine, secretary of the Kansas State Bar Association, has announced that the yearly meeting will be held in Topeka on January 11 and 12, 1911. He called attention to the fact, in the notice, that all Kansas lawyers in good standing can become members of the association by sending to the secretary for the necessary information and application blanks. This meeting is considered an important one.

The arranged program follows:

Annual Address: Honorable Burr W. Jones, Madison, Wisconsin. Subject: The Maladministration of Justice in Homicide Cases. Mr. Jones is the author of *Jones on Evidence*, and other

law books of note. He served several terms in Congress, is a fine lawyer, and an instructor in the University of Wisconsin.

President's Address: Honorable C. A. Smart, Ottawa, Kansas. Subject: The Establishment of Justice.

The following addresses are also announced: *The Unwritten Law*, by Honorable A. M. Harvey, Topeka, Kansas; *The Trial Judge*, Honorable C. E. Brantine, Hutchinson, Kansas; *A Square Deal in the Law and the Courts*, Honorable C. E. Benton, Ft. Scott, Kansas; *Right of Trial by Jury*, Honorable A. E. Crane, Holton, Kansas; *Constructive Service*, Honorable Jay T. Boots, Coldwater, Kansas; *Psychology as Related to Testimony*, Professor Wm. A. McKeever, Manhattan, Kansas.

There will also be an address by the State University law student writing the most meritorious paper in the competition for this honor. Subject: *The Moral Duty to Aid Others as a Basis of Civil and Criminal Liability*.

Juvenile Court Procedure.

Juvenile court work, its present influence, and future potentialities, were discussed at length at the November monthly banquet of the Lancaster County (Nebraska) Bar Association. The paper of the evening was read by Judge Lincoln Frost, who has for the past three years presided over the juvenile court of Lancaster county, his theme being "Procedure in Juvenile Court."

Judge Frost said in part: Not many years ago the law makers of the several states of this country saw that they were making criminals, instead of reforming their youths. They consequently passed such legislation as sent the youthful cul-

prits to industrial schools, but most of such laws still treated the child as a criminal, while mercifully allowing more latitude in dealing with him after trial. The mistake was in still treating him as capable of the commission of a crime, instead of looking upon the culpable act as a childish mistake.

Within the last eleven years, laws have been adopted in most of the states of our country, which have more or less rectified this mistaken way of dealing with the children. I refer to the juvenile court laws. The common law considers the child of seven as incapable of committing a criminal act. Long ago, many of the state statutes raised that age to ten years. If the common law could fix that age at seven, and the statute law at ten, is there any logical reason why the legislatures in their wisdom may not raise that age to sixteen or seventeen years? That is exactly what the juvenile court laws of most of the states have done. Impliedly, our own statute has fixed that age at sixteen years. Under the fixed age, the juvenile court laws of their respective states, take him out of the criminal class, and deal with him at the most as a wayward child. That is, the state steps in as the overparent, if you will permit the expression, and supersedes or supplants the natural parents, as the particular case seems to require.

These laws are not radical innovations, but are based upon long-established equitable principles which are simply applied under the new procedure. Under the old chancery practice the sovereignty, as the *parens patriæ*, was the paramount power where the property or the person of a minor was involved.

In dealing with children under these new methods it has been necessary to adopt entirely different court procedure. A law which recognizes the state's care as parental could not be properly administered by a judge clothed with a gown and seated upon a lofty throne.

In other words, it is absolutely indispensable to the proper handling of children under these new laws that the judge assume a friendly and familiar attitude toward the child before him, something the same as the child had been accustomed to, when talked to by his parents in his own home. Hence the juvenile court judges generally have come down from their bench, and have occupied a chair at a table with the child and his parents.

The whole procedure is modeled after the chancery, rather than the criminal, methods. Ordinarily before a child's case is brought into the juvenile court, a probation officer investigates to see whether the facts require such a course. If the probation officer concludes that they do, then a petition is filed, by "any reputable person being a resident of the county." In that petition you will not find any crime charged. It is simply alleged that the child is "dependent and neglected," or is "delinquent." There are no criminal acts there recorded to blacken the child's future. The child, however, is not brought before the court by a warrant. His parents or guardian are summoned, to appear with their child or ward as the case may be. If they fail, without good cause, to do so, those parents, and not the child, are to be treated as in contempt of court.

As has been already indicated, after the child is in court, the proceedings are most informal. There is no arraignment or plea. No oath is administered to him. After the probation officer has stated in general the facts in the case, the child is asked to tell the judge all about his trouble.

Under the new procedure the greatest latitude is allowed in disposing of the case of a child. The child may be allowed to remain in the home of his parent, with or without probation with some third person. And that is the disposition made of perhaps nine cases out of ten.





Boston University Law School.

At a large gathering of the alumni of the Boston University Law School there was a long discussion of plans for the movement which is designed to bring the lawyers and undergraduates into closer touch with each other, and to form new standards of legal ethics.

Regular meetings will be held each month. A justice of the supreme or superior court will be invited to discuss prominent legal questions, and also to take an active part in the formation of a code of legal standards and ethics and professional conduct. There will be two smokers given for the benefit of the law students, and subjects of special interest to them will be treated by the honored members of the profession.

This movement on the part of the association is receiving the commendation of all the attorneys who have been interviewed. It is the first alumni association of any law school which has actively participated in the practical concerns of the students in their respective schools.

Georgetown University.

The Morris Society of Georgetown University has been organized by several members of the 1912 law class of the university. The society is named after Judge Morris, founder of the Georgetown Law College.

The purpose of the society is to encourage more diligent study, from day to day, in the various subjects in the law course, and to assist one another in the solution of doubtful and difficult cases. Meetings are to be held after lectures, twice a week, or as often as desired.

University of Maryland.

By an overwhelming majority of the vote cast, the honor system has been adopted at a meeting of the Law Department students, University of Maryland.

Under the terms of the resolution adopted, the students solemnly pledged themselves not to cheat, nor to assist others to cheat, on any examination by any means whatsoever. Each student binds himself to report anyone he apprehends cheating at an examination to the executive committee of his class. The executive committee will promptly secure all the evidence of such cheating obtainable, and if it deem such evidence sufficient it shall call a meeting of the class and lay the evidence before it. The accused, if he desire, shall be heard in his own defense, or appoint someone to appear for him.

The entire class, sitting as a jury, with the president presiding and acting as foreman, the accused being excluded from this sitting, shall determine the guilt or innocence of the party accused. If a majority of the class find the accused "not guilty" the case shall close. If a majority find the accused "guilty" of cheating, the accused shall be ordered by the executive committee to sever his connection with the Law School. If he refuses to do this he shall be reported to the dean of the Law School by the executive committee, and his expulsion recommended.

University of Michigan.

A "National Michigan Dinner" in honor of William R. Day, Justice of the United States Supreme Court, four senators, and twenty-one members of Con-

gress, all of whom are alumni of the University of Michigan, is being arranged by the New York alumni. The dinner will be given in the banquet hall of the Hotel Astor, January 14, 1911, and it is planned to have present 1,000 Michigan alumni from all parts of the country.

Tulane University

One new instructor has been added to the ranks of the faculty of the Law Department of Tulane University this fall. This is Professor Elliott Judd Northrup, who will take charge of the common-law courses, relating to real and personal property, in which subjects he specializes.

Professor Northrup is a graduate of Amherst College, and received his B. L. degree at Cornell University. He is not only a theorist, but has practised his profession for seven years in Syracuse, New York, finally giving the work up to teach law at the University of Illinois, where he was a comember on the faculty with Secretary D. O. McGovney of the Tulane Law School.

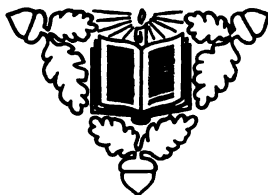
The legal encyclopedias contain a number of contributions from the pen of Professor Northrup, and he is well known among barristers throughout the country. While most of his essays have been confined to the law of property, he has also taught, and is familiar with, other branches of the common law. He comes to Tulane highly recommended as a legal instructor, and will devote his time exclusively to the work of the Law School.

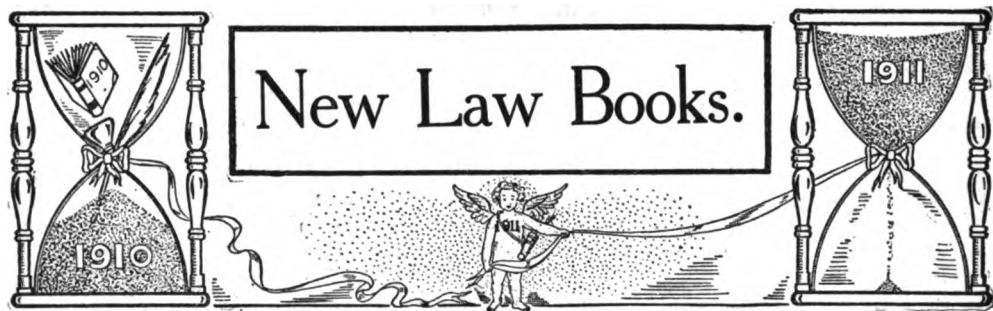
Law Students' "Eating Term."

In the heart of London, between busy Fleet street and the broad embankment,

there is carried out a custom that has been in vogue for several centuries. Every night between 5 and 5:30 o'clock one of the porters of the Temple, the University of Law, goes round the dull old quadrangles blowing an old-fashioned, silver-mounted horn to call the students to dinner. In each law term there is a period called the "eating term," during which the barristers-to-be are compelled to attend at least six dinners in the Temple Hall.

Temple Hall was built in 1572 and has a magnificent oak roof, richly carved, and a fine oak screen. On the dais at the end of the hall, Shakespeare is believed to have acted in "Twelfth Night" early in 1602. The long table at which the students dine was the gift of Queen Elizabeth to the benchers, and was made from a single oak in Windsor park. There is also a small dining table constructed from the timbers of Drake's ship, The Golden Hind. At present about sixty students dine here nightly. Not only has this miniature university town memories of the old crusading times, but its flavor is mingled with associations of the literary history of the eighteenth century. "It is the most elegant spot in the metropolis," wrote Charles Lamb, who was born in Crown Office row. "What a cheerful liberal look hath the portion of it which, from three sides, overlooks the greater garden—that goodly pile 'of building strong, albeit of proper height,' confronting, with massy contrast, the lighter, older, more fantastically shrouded one, named Harcourt, with the cheerful Crown Office row (place of my kindly engendrure) right opposite the stately stream which washes the garden foot with her yet scarcely trade-polluted waters. . . . A man would give something to have been born in such places." —Louisville Times.





"The High Court of Parliament and its Supremacy."—By Professor Charles Howard McIlwain (New Haven: Yale University Press.) \$2.50 net.

In this volume, its learned author deals with Parliament as a court, the relations of "judiciary" and "legislature," and the political history of Parliamentary supremacy. He attempts to account on historical grounds for the present-day extension of judicial action in America, which is attracting such wide-spread attention and has been discussed in so many recent articles. He concludes that the former activity of the judges of Tudor England under a government of fused powers is a very dangerous precedent, if it is to be followed slavishly, and applied without discrimination to a system in which there is a balance between divided powers, where an encroachment of one department upon another may endanger the balance and threaten the whole.

This work is a valuable addition to the story of the beginnings of our law, and its interest is enhanced by the fact that the legal ideas which it traces historically have so important a bearing upon controverted questions of to-day.

"Remedies by Selected Cases (Annotated)."—By Samuel F. Mordecai and Atwell C. McIntosh. \$6.00.

The aim of this work is to present, by a series of leading cases chosen from the decisions of the higher tribunals of England and America, the law of remedies applicable where personal rights or rights of property have been invaded. Commencing with remedies without judicial proceedings, the subject is elaborated by a treatment in successive chapters of remedies concerning real proper-

ty, and for injuries to personal property, personal security, personal liberty, and relative rights. This is followed by a consideration of injuries to rights growing out of contract, extraordinary and ancillary remedies and those in special cases, together with chapters on jurisdiction, process, and parties.

The annotation contains copious references to the Century Digest, Decennial Digest and its continuations, and to the L.R.A.

Mr. Mordecai is the dean of the Law School of Trinity College (North Carolina) and author of Mordecai's Law Lectures. Mr. McIntosh is a professor in that institution and author of Cases on the Law of Contracts.

"The History of the Telephone."—By Herbert N. Casson. (A. C. McClurg & Co., Chicago.) \$1.50 net.

The telephone, which is now taken for granted as a common-place accessory of everyday life, was, hardly more than a century ago, an unheard of thing, and had the visionary who dreamed of its first crude form, told his dream, its impossibility would have been quickly pointed out to him. The wonderful romance which Mr. Herbert N. Casson has unfolded is interesting from more than one point of view, but perhaps the most fascinating aspect of the story is that which shows the will power of Alexander Graham Bell and his associates in overcoming apparent impossibilities by invention after invention, each necessary to obviate some unforeseen difficulty. Fate had the most to do with the survival of the telephone, although it seemed bent upon crushing it more than once. For instance, Fate made Bell an expert in vocal acoustics and then luckily made

him rather ignorant of electricity. "Had I known more about electricity, and less about sound," he said, "I would never have invented the telephone." He would have seen impossibilities, in that case, which were real then, and which only subsequent invention enabled him and his coworkers to overcome.

"When Bell stood in a dingy workshop in Boston," says the author, "and heard the clang of a clock spring come over an electric wire, who could have foreseen the massive structure of the Bell System built up by half the telephones of the world, and by the investment of more capital than has gone to the making of any other industrial association? Who could have foreseen what the telephone bells have done to ring out the old ways and to ring in the new?"

The story unfolded is a remarkable one. At the present day the telephone has become as much an integral part of our daily lives as the clock and the watch. In the city no family is without one, no business house can do a day's business without its aid, every train that moves, every ship that leaves harbor, every event on track or turf, depend upon it, doctor and patient and lawyer and client, are brought together by it. The history of this marvelous invention is one, therefore, that concerns everybody.

"Corporations in Missouri."—By John H. Sears. 1 vol. \$5.

"Missouri Corporation Laws Annotated."—By Isaac H. Lionberger. 1 vol. \$4.50.

"Interstate Commerce and the Sherman Anti-Trust Law."—By Dewitt C. Moore. 1 vol. Buckram, \$7.50.

"Code of Practice of Louisiana."—With annotations by Henry L. Garland. 3d ed. \$15.

"Minnesota Digest."—By Mark B. Dunnell. Covering Minnesota Reports, 1-109 (110 and 111 in part). 3 vols. Buckram, \$31.50.

"Cross Reference Annual Series."—Vols. 3 and 4. Being a continuation, or supplemental digest, to Pepper & Lewis's Digest of Pennsylvania Decisions, by George Wharton Pepper, William Draper Lewis, and Samuel Dreher Matlack, \$10 per vol.

"Reports of the Tennessee Court of Civil Appeals."—Only leading cases to be published, embracing cases affirmed by the supreme court and leading cases decided by the court of civil appeals, and not removed to the supreme court. Probably two volumes to be published annually. \$4.25 per vol.

White's "Texas Penal Code."—Enlarged and revised by Walter Willie. 2 vols. Buckram, \$12.



Recent Legal Articles in Law Journals and Reviews

Action.

"What are 'Personal Actions?'"—30 Canadian Law Times, 862.

Aeroplanes.

"Liability for Accidents in Aerial Navigation."—9 Michigan Law Review, 20.

Amusements.

"Duty of Proprietor of Place of Amusement to Provide for Safety of Patrons."—43 Chicago Legal News, 112.

Appeal.

"How to Assist an Appellate Court to Arrive at Your View of a Case."—43 Chicago Legal News, 111.

"The Test of What is Technical Error or Defect, or Exceptions Which do not Affect the Substantial Rights of the Appellant in Criminal Cases."—17 Kansas Lawyer, 50.

"The Practice in Reversing Judgments N. O. V. and in Amending the Pleadings in Pennsylvania."—59 University of Pennsylvania Law Review, 77.

Arbitration.

"The North Atlantic Fisheries Arbitration—Complete Report of the Award."—30 Canadian Law Times, 879.

Assignment for Creditors.

"Liability of Trustees under Deeds of Assignment."—32 Australian Law Times, 26.

Attachment.

"To What Extent are Money, Jewels, Bonds, or Other Property, Carried on or Attached to the Person of the Holder, Subject to Replevin, Attachment, or Other Means of Recovery or Execution at Law or in Equity."—43 Chicago Legal News, 118, 128.

Attorneys.

"The Acquisition and Retention of a Clientage."—43 Chicago Legal News, 124.

"American Legal Orators and Oratory."—22 Green Bag, 625.

"The Legal Profession in France."—14 Law Notes, 149.

Brougham.

"Brougham as an Advocate."—36 Law Magazine and Review, 36.

Buildings.

"The Housing Regulations in Regard to Inspection of District."—74 Justice of the Peace, 554.

Cabinet.

"The Evolution of the Cabinet System in England."—36 Law Magazine and Review, 49.

Commerce.

"The Application of the Commerce Clause to the Intangible."—41 National Corporation Reporter, 405, 440.

Common Law.

"The English Common Law in the United States."—24 Harvard Law Review, 6.

Conservation.

"Conservation and the Constitution."—20 Yale Law Journal, 18.

Constitutional Law.

"Judicial Control over the Amendment of State Constitutions."—10 Columbia Law Review, 618.

"Effect of a Change of a Judicial Decision as to the Constitutionality of a Statute."—59 University of Pennsylvania Law Review, 92.

Contracts.

"The Formal Contract of Early English Law."—10 Columbia Law Review, 608.

Corporations.

"Duplication of Shares."—32 Australian Law Times, 27.

Costs.

"Liability for Costs of a Person not a Party to an Action."—23 Bench and Bar, 57.

Courts.

"Criticizing the Judiciary."—18 The Bar, 33.

"The Methods of Work in the Illinois Supreme Court."—41 National Corporation Reporter, 433.

"International Courts."—20 Yale Law Journal, 1.

Criminal Law.

"Treatment of Offenders."—32 Australian Law Times, 25.

"The Classification of Criminals."—1 Journal of Criminal Law and Criminology, 536.

"The International Congress of Criminal Anthropology: A Review."—1 Journal of Criminal Law and Criminology, 578.

"Relation of the Alien to the Administration of the Civil and Criminal Law."—1 Journal of Criminal Law and Criminology, 563.

"The Unit of Offense in Federal Statutes."—20 Yale Law Journal, 28.

"Nature and Limits of the Pardoning Power."—1 Journal of Criminal Law and Criminology, 549.

Demise.

"Demise of the Crown and Oversea Parliaments."—32 Australian Law Times, 31.

Divorce.

"The Problem of Marriage and Divorce."—36 Law Magazine and Review, 1.

"The Divorce Commission."—45 Law Journal, 681.

"Divorce in Canada."—46 Canada Law Journal, 633.

Drunkenness.

"Fair Play for the Inebriate."—1 Journal of Criminal Law and Criminology, 573.

Evidence.

"Medical Evidence in Personal Injury Cases."—23 Bench and Bar, 62.

Executors and Administrators.

"Actions against Executors."—36 Law Magazine and Review, 23.

Ferrer.

"The Life and Death of Ferrer."—36 McClure's Magazine, 43.

"The Trial and Death of Ferrer."—36 McClure's Magazine, 229.

Finance Act.

"The Finance (1909-10) Act, 1910."—74 Justice of the Peace, 518, 530.

Gambling.

"Betting on 'Extemporized Race Courses.'"—74 Justice of the Peace, 529.

Game Laws.

"The Sale of Game."—74 Justice of the Peace, 518.

Gift.

"Donatio Mortis Causa."—59 University of Pennsylvania Law Review, 95.

House of Lords.

"The Prerogative of the Crown and the House of Lords."—36 Law Magazine and Review, 65.

Infants.

"The Daughters of Herod; A Plea for Child-Saving Legislation."—43 New England Magazine, 137.

Insurance.

"Insurance of Motor Cars."—21 World's Work, 13722.

Landlord and Tenant.

"Responsibility of Landlord for Personal Injuries in Nonobservance of Covenant to Repair."—71 Central Law Journal, 373.

Law.

"A Recent History of English Law."—9 Michigan Law Review, 1.

Law Associations.

"The International Law Association: London Conference."—36 Law Magazine and Review, 77.

Law Schools.

"The Extension of Law Teaching at Oxford."—24 Harvard Law Review, 1.

Libel.

"When a Libel is Not a Libel."—20 Yale Law Journal, 36.

"Newspapers and Libel."—32 Australian Law Times, 29.

License.

"Billiard Licenses."—74 Justice of the Peace, 554.

Limitation of Actions.

"Part Payment."—30 Canadian Law Times, 925.

Mines.

"The Mining Law of Ontario."—30 Canadian Law Times, 853.

Monopoly.

"The Supreme Court and the Sherman Anti-Trust Act."—59 University of Pennsylvania Law Review, 61.

Monroe Doctrine.

"The Monroe Doctrine."—43 Chicago Legal News, 107.

Moses.

"Unveiling of the Portrait of the Late Adolph Moses."—43 Chicago Legal News, 123.

Municipal Corporations.

"Constitutional Limitation of Municipal Debts."—15 Dickinson Law Review, 37.

New Nationalism.

"'New Nationalism' and The 'Wilson Theory.'"—71 Central Law Journal, 350.

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"Use of Intoxicating Liquors by Juror as Ground for a New Trial."—71 Central Law Journal, 312.

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Patents.

"Liability of United States for Patent Inventions under Act of 1910."—10 The Brief, 138.

"Damages and Profits in Patent Causes."—10 Columbia Law Review, 639.

Pensions.

"The Pension Carnival."—21 World's Work, 13731.

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"The Removal of Channel Island Paupers."—74 Justice of the Peace, 542.

Practice and Procedure.

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"A Lawsuit in Mexico. (Civil Suit)."—22 Green Bag, 612.

Replevin.

"To What Extent are Money, Jewels, Bonds, or Other Property, Carried on or Attached to the Person of the Holder, Subject to Replevin, Attachment or Other Means of Recovery or Execution at Law or Equity."—43 Chicago Legal News, 118, 128.

Seals.

"The Antiquated Seal."—17 Case and Comment, 337.

States.

"Violations by a State of the Conditions of Its Enabling Act."—10 Columbia Law Review, 591.

Strikes.

"Strikes."—30 Canadian Law Times, 866.

Taxes.

"Constitutional Aspects of the Federal Tax on the Income of Corporations."—24 Harvard Law Review, 31.

"'Value at Death,' Some Practical Difficulties with the Valuation of Legacies under the Inheritance Tax Laws."—14 Law Notes, 147.

Timber.

"The Law of the Forest."—14 Law Notes, 150.

Trademarks.

"Some Historical Matter Concerning Trademarks."—9 Michigan Law Review, 29.

Tradename.

"Tradenames."—20 Yale Law Journal, 44.

"Moneylender and 'Usual Trade-name.'"—32 Australian Law Times, 30.

Trespass.

"Trespass by Aeroplane."—36 Law Magazine and Review, 17.

Trusts.

"Some Defects in Trust Companies."—71 Central Law Journal, 370.

Vann.

"Judge Vann of the New York Court of Appeals."—22 Green Bag, 611.

War.

"Peace and Disarmament."—36 McClure's Magazine, 113.

Wills.

"Law Governing Construction of Devise of Real Property."—17 Case and Comment, 325.

"Lay Views of Testamentary Capacity."—17 Case and Comment, 329.

"Some Wills of Noted Lawyers."—17 Case and Comment, 332.

"The Drawing of Wills."—17 Case and Comment, 335.

"The Importance of the Last Will and Testament."—17 Case and Comment, 341.



Amicus Curiae.—Recently in Denver certain prominent merchants were greatly annoyed by the profanity of boys who congregated in a certain alley of an evening newspaper. Much complaint was also made about the petty gambling and other offenses of these boys, most of them newsboys. A number of individual boys, charged with such offenses, have been brought into the juvenile court. In every case they have reformed their habits to the entire satisfaction of the officers of the court. A friend of Judge Lindsey's told him that he had overheard one of these street boys deliver himself of the following to a new boy in court: "Now, look-a-here, John, if you knows what is good fur you, you'll stay by de judge. He's square, he is, wid de kids, and de kids has got to be square wid him and de first kid dat goes back on him is going to git smashed, see?"

Enjoining the Policeman.—"Once," says Judge Ben B. Lindsey, "in the midst of an important lawsuit, little Maurice, who had been considered rather a hopeless rascal, poked his head in the court room and was promptly "shooed" out by the bailiff. We were in the midst of an important trial, involving the construction of a law upon which depended the disposition of a million dollars' worth of property. I told the bailiff to let that boy come in, he was one of my friends. He came up to the bench, while I suspended the trial for three minutes. I said, 'Maurice, what can I do for you?' He said, 'Well, judge, it's dis way; I's been sellin' papers down by the Mining Exchange corner for a year and I's always hopped on the cars when I feeled like it, and now dey's got a new guy down there for a cop; he's one of dese fly bulls dat tinks he owns de town and won't let me

git on de cars, and I's been losing 50 cents a day for a week.' 'Well,' I said, 'Maurice, what can I do about it?' He read the papers as well as sold them, and he promptly replied, 'Well, what I want you to do is to give me one of these here injunctions against this cop.' Maurice got the injunction in the shape of a kindly note to the policeman, stating that he was a ward of the court, and it was our special desire that he be allowed to 'hop' the cars all he pleased. The next report day Maurice came up beaming. 'Well,' said I, 'Maurice, how did the injunction work?' 'Oh, it worked fine,' he replied. 'He liked to drop dead when he read it. He's trying to be my friend now. He tinks I've got a pull wid de court.' Maurice to-day, after two years, is a splendid boy."

An Official Heart-to-Heart Talk.—If the example set by a Minneapolis policeman is to be followed in all the cities of the country, the police civil-service examinations must hereafter embrace the subjects of rhetoric, elocution, and a course in the fundamentals of good citizenship. It all came about this way. People passing by a certain schoolhouse had been snowballed, slides had been constructed to the peril of pedestrians, and in various and sundry ways the bigger boys and some of the littler ones had made their teacher realize that youth is a period of high spirits. Once or twice she had called up the police station, and an officer speedily appeared and issued a warning to the youthful offenders, but as soon as his blue coat vanished around the corner the fun began again.

When next summoned, an inspiration struck the officer and he suggested a good-citizenship meeting. The children gathered in the big hall and the police-

man acted as presiding officer. One by one he reviewed the indulgences of the last few days, in each case pointing out to the children why this and that was contrary to good citizenship, and why the police could not and, moreover, would not stand for it, and why in the name of patriotism the children must face around and do differently.

The officer says he hopes the children now see the necessity of a new order of things. It is said to be the first time in the history of the local public schools that a uniformed policeman has come in and given the children a heart-to-heart talk.

Admired Horses Too Much.—Possibly the youngest horse thief ever placed on trial was found guilty in a Suffolk, Virginia, court a short time ago. The prisoner was a lad but nine years old, and the charge made against him was his second offense. Owing to his youth, there was no prosecution for the first horse stolen, but when he disappeared a second time with a valuable animal which did not belong to him, he was pursued and captured by a posse after a chase of several miles. The boy, who had to stand in a chair to look over the edge of the judge's desk when his plea was made, said he was hired to steal the horse, but failed to identify the man whom he accused. He was sent to the state reformatory for an indefinite period.

"The City of Boys."—Humaniculture is the new science. Have you heard of it? It is being taught by Judge Willis Brown, of Utah, lecturer, writer, and humanitarian. The science of humaniculture is the art of reclaiming boys and girls, who, for misdemeanors and petty crimes, have been brought into criminal court and classed with hardened criminals.

Judge Brown's greatest achievement in the humaniculture line, says the Pica-yune, was the founding of "Boy City," or Boyville, at Charlevoix, Michigan. This city of boys is laid out on the same broad plan that governs any progressive city of grown-ups, the boys electing their own mayor, town council, etc., providing funds for playgrounds and athletic development, and everything pertaining to

the moral and physical upbuilding of the boy. The boys study their own political situation far more carefully than do most citizens theirs, and every boy casts his ballot as he thinks best, which cannot always be said of the men who look after the welfare of the people at large. The idea of the City of Boys is to make manly men out of material more or less below par.

At the dedication of Boyville some time ago Governor Harmon, of Ohio, addressed the citizens of the new town and spoke of the movement in the heartiest terms. With him were many notables, and every one was intensely enthusiastic over the new project. In Boyville the laws are all made by the boys, enforced by them, and lived up to by them. It is an institution unique beyond anything ever before organized, and, best of all, it is proving a wonderful success. Judge Andrew H. Wilson, of the Juvenile Court of New Orleans, together with nearly every other juvenile court judge in the United States, have given the movement their hearty indorsement, and not a few more material encouragement.

Reformation by Dentistry.—Ten dollars' worth of dentistry supplied by the Children's Day Association has reformed a delinquent Chicago urchin into an honest, industrious boy. A \$5 gold piece received in Chicago yesterday proves the transformation. Joseph Bejlovec, sixteen years old, was, until a short time ago, a delinquent youth, and spent most of his time dodging the truant officer, and the rest in mischief. He was arrested and taken before the juvenile court on March 17. There he was examined, and his teeth found to be in bad condition. The court nurses told the agent of the Children's Day Association. The association is devoted to relieving emergency cases that appear before the court, and the agent was interested immediately. She gave \$10 to be used in fixing Bejlovec's teeth. As soon as this was done the judge told the boy he would not punish him, but would send him to a farm at Scherville, Indiana, where he could work, and, if willing to do so, he could save up enough money to pay back the \$10. The boy went to

the farm. Later a letter was received at the offices of the Children's Day Association in the Woman's Temple. When it was opened a \$5 gold piece rolled out. It was from Bejlovec.

A Wise Magistrate.—There is, says the Rochester Herald, a magistrate down in Philadelphia who is long on horse sense, even though he may be open to the charge that he is short on law. This wise official, whose name is Scott, had a boy before him on a charge of stealing a 5-cent pack of playing cards. Magistrate Scott inquired of the prosecuting witness if he thought it right to put the brand of a criminal on a boy for so small a sum as five cents. The reply was that a boy who would steal so trifling an article would steal something more valuable, if opportunity offered.

That appears to have aroused the indignation of the magistrate, a man with a good memory, we judge, who inquired: "Then how was it that your firm was willing to drop the charges against a clerk who was before me some time ago for embezzling several thousands of dollars, when that person promised to repay the money? If it is the money you want, I will order the boy to pay you 5 cents, and discharge him, too."

We learn from the Philadelphia Record's account of the incident that the boy proffered the nickel, which the magistrate accepted, and discharged him from custody, thus closing the incident.

Whether lawful or not, Magistrate Scott's act was one which may be commended to others who are careless about affixing the brand of criminality upon the young.

An Extraordinary Case.—A young attorney not noted for his brilliancy recently appeared in court to ask for an extra allowance in an action which he was so fortunate as to have been retained in. The court not discovering anything at all unusual, complicated, or extraordinary about the litigation, inquired of the young man: "What is there about this case that to you seems extraordinary?"

"That I got it," blandly and innocently replied the youthful aspirant for fees.

The Maid and Mephistopheles.—A judge in one of our middle west states advertised for a stenographer with experience in legal work. A number of applicants called at his office for the purpose of making application for the position. Each applicant was given a trial to test her speed, accuracy, etc. Among the applicants was a young lady whose anxiety to make a good showing evidently unnerved her. The judge dictated to her a few sentences in legal language, one of which was: "That would give him time to complete the devastation of the assets." This sentence as transcribed by the young lady on the typewriter read as follows: "That would give him time to complete the devil's station with a hatchet." Although much amused at her ludicrous blunder, the judge permitted her to go away without telling her of her mistake.

Attached the Banquet.—There are many interesting anecdotes, says the Chicago Tribune, told of judges and lawyers of the Chicago bench and bar. For instance, there is the story of the lord chief justice's dinner. Chief Justice Coleridge, of England, was in Chicago and was entertained at a banquet. It so happened, however, that the man who was giving the feast had some outstanding debts that had previously proved uncollectable. A young lawyer, not invited to the banquet, held one of these claims for collection, and he evolved the idea of attaching the banquet.

When the line was formed for the march to the banquet hall, it was suddenly discovered that a deputy sheriff was in charge of the food. In vain the host stormed, and declared the dinner could not be attached for any claim against him, as he had not yet paid for it, and consequently it was not his property.

The young lawyer said they could settle that question in court in the morning. Meanwhile it was immaterial to him whether the lord chief justice of England had anything to eat or not. The result was that the host had to borrow sufficient money from some of his guests to satisfy the claim.



Our Jean Valjeans

IN an address before the National Conference of Charities and Corrections, Judge Ben B. Lindsey said: One trouble is that we do not think. Victor Hugo did not suffer from this shortcoming to which we are all more or less victims. Nearly one hundred years ago a Paris newspaper contained an item (as far as the principle is involved), seen in our city newspapers almost any day. A boy had been arrested, tried, and incarcerated for stealing a loaf of bread. How many thousands of readers glanced over that item without another thought. Yet it was the suggestion to one who did think, for a story of life that thrilled the heart of the world. It is all right to sympathize with Jean Valjean. And yet no code of ethics or morals will justify, or ought to justify, what he did.

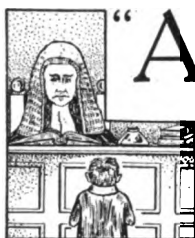
Our revulsion at his punishment is what causes us, in our profound pity and sympathy, even to justify his act. It is, inherently, a mistake to ever justify the unlawful satisfaction of any desire. We may very properly even excuse and sympathize with an unfortunate. This is entirely different from justification. When you try to justify an unlawful act you are treading on dangerous ground, and while apparently proper in an individual case it would be sowing the seeds from which in the end we should reap the fruits of bitterness. The trouble in Jean Valjean's case was that justice was not done. It is as natural for a boy or girl to want joy and fun as it is to be hungry. It is just as important to satisfy one as the other. If either is satisfied unlawfully, the act must be corrected.

There should have been justice to the boy who stole. There should have been justice to the man who, in the sweat of his brow, and by his own labor, had produced that loaf of bread. Suppose he had forty loaves as the result of a day's work, and forty Jean Valjeans had appeared upon the scene. He may have had hungry children of his own to feed. The judge was no better or worse than the people or the system under which he lived and acted. The rights and duties of each were not adjusted to each other. There was neither harmony nor justice. Jean Valjean should have been corrected, but corrected with the love and tenderness of our Saviour, as He would have corrected him. Would He have told Jean it was right to steal that bread? No. The Master would have said: "Thou shalt not steal." He would have forgiven him. He would have assisted him, so that he could accomplish lawfully what he had done unlawfully. That is what the juvenile court would do.





Some Prominent Juvenile Court Judges and Their Work.



A SQUARE deal for children,—this might well be the motto inscribed above the door of the Marion county juvenile court, where sits Judge George W. Stubbs looking ever to the welfare of the city's unfortunate

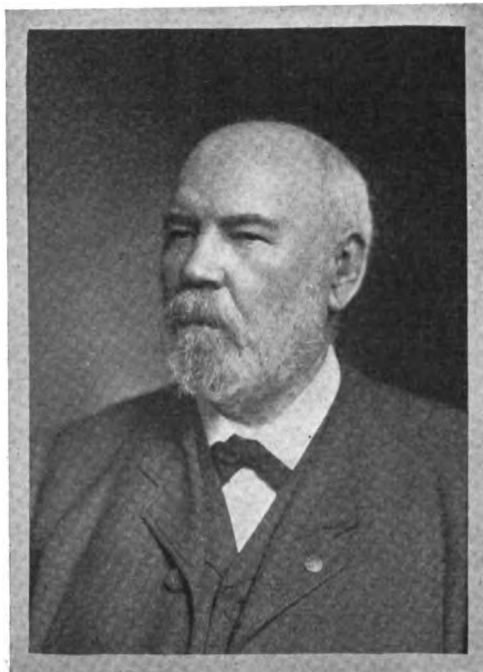
children. In his report to Governor Marshall, Judge Stubbs said: "The law provides for the appointment of two probation officers who are paid officers of the court. Their duty is to make investigation in the case of every child against whom a charge has been filed. This must be done and a report in writing made to the court before the case is tried. This report covers the character, reputation, general conduct, habits, associations, and school record of the child, and the kind of home and the character and habits of its parents. These investigating officers are instructed to find out every good thing that can be said in the child's favor. At the trial of the child the probation officer

must appear in its behalf, thus securing to it the presence of a friend at court whose duty it is to see that all the evidence in the child's favor that can be produced is brought out and made plain to the court."

"In addition to the 5,875 cases disposed of by formal action, many hundreds of persons, both men and women,

have been brought into court upon notice against whom the court declined to permit charges to be filed. Such cases were usually of a domestic character, and for the most part were the outgrowth of quarrels between the father and mother, often the result of an infirmity of temper. A plain and vigorous talk to such parents, in which they were shown what the results of their conduct might be upon the lives of their children, generally resulted in reuniting the family."

"In summing up the seven years' work of the court it may be said that hundreds of boys properly termed 'bad boys,' who were brought into the court during the first three or four years of its existence, are now young men, doing



HON. GEORGE W. STUBBS,
Judge of Juvenile Court of Indianapolis.

for themselves and making their way in the world. Many are holding good positions where they have the confidence and respect of their employers, and have a bright future before them. These boys were all poor boys and nearly all of them came from the poorest homes. Dealing with these boys has demonstrated that poverty is no drawback to a boy, providing his pride can be awakened and his ambition stimulated. If the boy has a normal mind, and a job can be found for him that he likes,—if the manliness that exists in almost every boy can be aroused to the serious and important things in life,—he can in nearly every case be given a good start toward success and prosperity, no matter how poor he may be, if his parents have any sense whatever of their responsibility toward him."

The court has gained a reputation among similar courts, that is surprising. While not without honor at home its fame has gone abroad and among students of, and experts in, juvenile work it is widely known, and has a great reputation. Many visitors come each year. A year or two ago a lady representative of the Howard association of England, a noted prison reform organization, visited Indianapolis and attended the full sessions of the court every day for seven weeks, and later came back for ten days more. In her formal report she advised that the Indianapolis system be recommended by the International Prison Association. Another visitor, Judge Habled Solomon, of Sweden, sat daily for eight weeks with Judge Stubbs, and on his return home published a book about the juvenile courts of the United States, and out of 258 pages 148 were devoted to the Marion county court.

Los Angeles Active Juvenile Court Justice.

Curtis D. Wilbur, judge of the juvenile court of Los Angeles, says the New Orleans Picayune, is demonstrating almost daily the theory that criminal tendencies are chiefly physical in their nature, and that they are as much a disease as is a tendency to tuberculosis or neurasthenia. Just as one would kill a cancer by destroying its roots, so Judge Wilbur is

combating child degeneracy and dependency by considering the human body as a garden in which foul growths often spring up, which can be killed and kept from sprouting by removing those things which nurture them.

Judge Wilbur believes even the most desperate cases of child incorrigibility can be cured by starting with a treatment of fresh air, sunlight, and a copious application of water, which will make for a healthy body, which, in turn, will develop an equally healthy brain tissue. On this brain impressions can be made by a system of teaching, which will eventually bring about a form of auto-suggestion to the patient which cannot fail to make the good, the pure, the beautiful, and the true attractive to him.

For the last year Judge Wilbur has been placing more stress on medical and surgical attention for wards of the juvenile court, than on corrective instruction for the mind. When he has developed a healthy body he finds it easy enough to lead the mind in the right paths.

Judge Wilbur's court is attended regularly by prominent local physicians, who offer their services free of charge and make suggestions as to the best methods of treatment. For once a place has been found where the representatives of the medical profession work in harmony. In Judge Wilbur's court they meet on an altruistic plane to strive for the betterment of future generations, by a study of criminal therapeutics.

His office is crowded after court hours by women who wish to talk about their children. He seems to remember all the details pertaining to the history of each child, and calls them familiarly by name. If he suggests an operation, it is because he knows, from experience, that surgery has proved beneficial. The mothers trust to his knowledge, and several surprising examples of child metamorphosis have resulted.

The motto of the Los Angeles juvenile court is carved in the heavy oak panel above the judge's bench: "Gently to hear and kindly to judge." It seems rather a simple motto, but it is made impressive when the judge, who lives up to his motto, is seen carrying on the work of his office.

New Orleans Unique Juvenile Court and Its Efficient Judge.



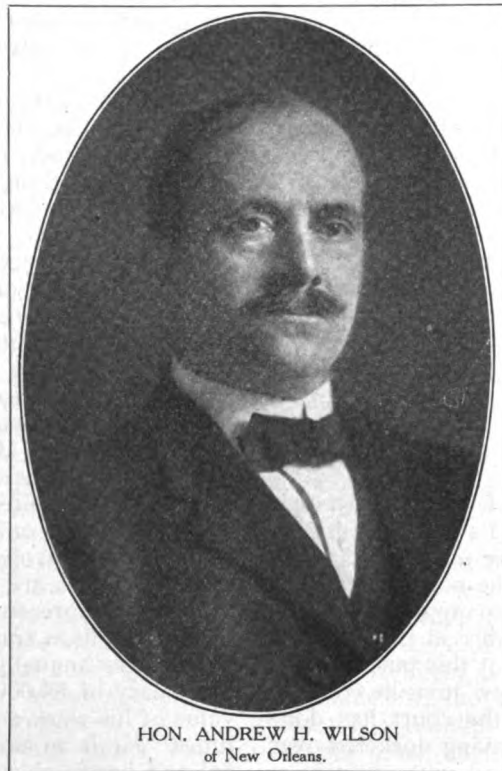
HONORABLE Andrew H. Wilson, Judge of the juvenile court of New Orleans, was born in that city in the early sixties. He was educated principally in the public schools of that city. He studied law in

the law office of Merrick, Race & Foster, a famous law firm of New Orleans. He attended one session of the Law Department of the University of Louisiana to get the benefit of the lectures of Mr. Thomas J. Semmes on Civil Law. Mr. Wilson's practice has been chiefly along the lines of civil law, with occasional cases in the criminal courts.

In 1887, Mr. Wilson was appointed by the governor as a member of the board of education of New Orleans. Here he found opportunity for useful and interesting work, for he gave twenty-one years of consecutive service to the public schools of New Orleans as a member and president of the board of education.

The juvenile court was established in New Orleans by constitutional amendment adopted in the fall of 1908. It was because of his well-known ability as a lawyer, and because of his long and voluntary association in the public-school work of New Orleans, and of his knowledge of children, that he was urged to

accept the judgeship of the new court, which commenced operations on January 1st, 1909. That the court has been a success, that it at once entered into great public favor, and that it is accepted as a most useful and indispensable public institution, goes without saying in New Orleans. There have been many tasks for the court, however, and for the supreme court of the state, which is the only court that may supervise the *dicta* of the juvenile court; for the court was new, and its pathway had to be found and its lines laid out, and many constructions and interpretations had to be invoked to assist the court on its splendid way. It has been noted, however, that the juvenile and supreme court have coincided almost unanimously in this work, and that the progress of the juvenile court has been commended from so many points of view.



The juvenile court of New Orleans is remarkable among the juvenile courts of the United States in this, that it represents the most advanced form and creation of constitutional legislation in this feature of the judicial department. There has been no reservation at all, the court being given jurisdiction of all children under seventeen years of age, for all crimes and offenses of any nature committed by them; also the disposition of all neglected and delinquent children for whatever cause; and it has jurisdiction

for the trial of all adults for any offense against a child under seventeen years of age, not in the felony class; and it has special jurisdiction against all parents for nonsupport or abandonment of children. It will be noted that this gives the court absolute jurisdiction of the child from every standpoint, and that it is also created as the special friend and guardian of the child. As to adults, the jurisdiction covers nonsupport, assault, abuse of child labor and liquor laws, and violations of the many state laws and city ordinances made for the protection and care of the child. This broad jurisdiction gives the court a great amount of work to do, the docketed cases exceeding 2,500 annually, in which are not counted the many summons cases that are not docketed and are heard privately. The court, under its constitutional prerogatives, must be and is kept open always day and night and Sundays; in fact, since the minute of its official beginning, its doors have never been closed.

At the courthouse are accommodations for children at all hours, and meals are served gratuitously. It is temporarily a home for all children brought in, whether resident or waifs; of course, it is always understood that no children are ever brought to a police station or jail, or transported in a police van.

One line of work of which the court is proud, and in which its good results are not excelled anywhere in America, is in the enforcement of the nonsupport laws, compelling parents to support their offsprings. The legislature in 1902 enacted a most efficient law for this purpose, and it has fallen to the new juvenile court to carry it out. This the court has done seriously and well, having docketed over 400 cases annually, and given particular attention to each case. In this work the district attorney's department has taken a great interest and done most thoroughly all that lay before them. It is said at the court that in 1910 the court will have forced the payment of approximately \$40,000 for the support of children. Of

the large number of cases in the court it is estimated by the judge that only about 60 per cent go to final judgment or produce alimony, as he makes it his duty to attempt a reconciliation of the spouses in every case. He thinks this a patriotic duty, in holding the family together and thus contributing to the peace and order of the community; besides the enforcement of this law has proven a great antidote to the divorce evil. It has been demonstrated that the mothers of families do not want divorces when they can compel the delinquent spouse to support his children. So that altogether, the court is well pleased with results in this special line of its busy work.

The work of the court has also attracted attention in the enforcement of the liquor laws made for the protection of children, the selling of firearms to children, and the enforcement of child-labor laws. Under this statute, last referred to,—a recent enactment of 1908,—this court held against one Lew Rose for employing a child to perform on the stage. This case was maintained by the supreme court of Louisiana in *State v. Rose*, in January, 1910, just as a similar case, *Com. v. Griffith*, was decided by the supreme court of Massachusetts in the same month. These two cases have set the tide in the United States against children performing on the stage. Some important cases involving interpretation of the liquor laws are now pending on appeal in the supreme court.

Judge Wilson transacts a vast volume of business annually for a meagre judicial salary of \$4,000 a year. The social value of his work exceeds this sum many times. He is an amiable man, of beautiful and heroic character, and well fitted by natural gifts and training to discharge the duties and fulfil the obligations of the unique position which he occupies. While not a rich man, his sympathies are boundless, and he unostentatiously gives away annually considerable sums of money to aid his juvenile wards.

**St. Louis Juveniles
Have a Friend in Judge Taylor.**

Judge Wilson A. Taylor, of the St. Louis court of criminal correction, occupies a unique position as guardian and foster parent of more children of foreign birth or parentage than perhaps any other person in Missouri or the United States. This distinction, which the young jurist enjoys as a coveted honor, has come to him through his connection with the enforcement in the city of the compulsory education law.

In dealing with delinquent parents of delinquent children who have been brought into court, Judge Taylor has established a precedent from which he never departs in the granting of paroles with stipulation that regular reports shall be made in person by parents during a term of two years in which the court has jurisdiction in each case.

The Missouri law confers authority on the court to impose a fine with imprisonment in cases where parents neglect or refuse to send their children to school during the prescribed terms. In the enforcement of this law the truant officers of the city have brought scores of residents, generally of foreign birth, into the court, angry and defiant because of "interference with their personal liberty." Through a policy of conciliation Judge Taylor has succeeded in convincing these delinquent ones of the justice of the provisions of the law, and by invoking the power of parole has kept them under direction of the court while children have acquired the rudiments of an English education, enabling them to become interpreters when required to report.

During three years that Judge Taylor has presided in the court of criminal correction he has in his way exercised a controlling influence over the lives of scores of boys and girls. He has interested hundreds of the foreign population in American schools and American institutions, who, it is said by a strict enforcement of fines and penalties, would have been driven to malice and defiance of law. Every month there are numbers of the children who bring their parents into court where they act as interpreters of the foreign tongues, while the Judge

keeps posted on the progress of his wards.

"I don't like to send a boy to the work-house," said Judge Taylor, in discussing the procedure of the court of criminal correction. "They learn evil there, and are apt to leave that institution hardened criminals."

In the cases of boys under twenty-one, and who are before the court for the commission of a first offense against the law, it is the practice of Judge Taylor to grant a parole. He frequently receives letters from these boys when beyond the jurisdiction of the court, but who recognize the moral obligation to report according to the terms of their paroles. These letters have in various ways conveyed to the judge an appreciation of favors bestowed, and have given assurance of benefits derived from the admonitions of the court and the added chance in the battle of life.

**Judge Lindsey of Denver—
the Man and his Boys.**

Mostly forehead is Judge Benn Barr Lindsey, says the *New York Globe*. Very unimpressive at first glance. Just a small man, with his brown eyes peering at you through old-fashioned spectacles, and a forehead that bulges over them, and a slender body carelessly dressed. Just a little higher than the bar rail. You not only wouldn't pick him out in a crowd,—you could hardly find him in a group. But he has made a noise that has echoed across the continent. It has even jarred some of the ideas that came over with William and have been getting blue-molded in the English courts ever since. The London jurists talked them over the other day. The consensus of opinion was: "How very odd."

He is the children's court judge in Denver, whose ideas have revolutionized the world's way of dealing with the juvenile offender. Lindsey doesn't believe it is as important to know what a kid did as why he did it. He doesn't get on a cap and kimono and pull his steel-bowed specks down on his nose and rasp "Well!" at the frightened little rooster until that pint-sized criminal resorts in self-defense to a silence that seems sullen, but is only scared. Lindsey gets his

arm about the kid's shoulders and talks to him like a brother. He tells of the time he, too, ran "wid de gang." They say he even learned to smoke in order that he might be at ease with his callers. He doesn't sentence a boy found guilty. The pair talk it over, and decide between them how long a time at Golden would straighten out the lad's moral kinks. That is where the Colorado reformatory is located. If that is the answer, Lindsey gives the boy the commitment papers and his fare to Golden, and the boy goes all alone. Ordinarily, though, they decide between them that if the boy stays at home he'll do better. So he stays, and now and then comes up to talk things over with the judge.

He is fighting political parties and business men and financiers and parents and school systems and grafters and everyone else who gets in the way of his pet idea, to have justice done, with kindness, to the kids. He developed the juvenile-court system which has been adopted by every up-to-date community. He is the author of a dozen or so laws bearing on this subject, and of as many books. He is, perhaps, the most unpopular man in Denver with the politicians,—but he has the solid support of the kids. Just to show what that support amounts to, he quarreled with the chief of police once because the wine rooms of the city were open to the youngsters. The chief demanded a hearing, at which Lindsey was to produce his witnesses. That hearing was in Lindsey's court room.

"Not a wine room was open last night," said the chief indignantly.

A little bit of a chap got up and shrilled at him: "Yep. They were all closed last night. But how about the other nights, fellers?"

And 200 grave prosecutors in knee breeches rose to answer:

"Open."

Judge Battle of Arkansas Received Loving Cup.

Judge Burrill B. Battle, retiring associate justice of the Arkansas supreme court, was presented with a handsome loving cup as a token of the esteem in which he is held by the members of the Arkansas Bar Association. Judge W. E.

Hemingway, one of the leading members of the Little Rock bar, and for four years a member of the supreme court, made the speech of presentation, and the scene was deeply affecting, as the venerable jurist of twenty-five years' continuous service responded his grateful acknowledgment of the tribute from the lawyers of Arkansas.

Judge Tayler of Cleveland Dies.

Judge Robert W. Tayler, of the United States district court, died at Cleveland, Ohio, on November 26th.

He was born in Youngstown, Ohio, November 26, 1852, the son of Robert W. Taylor, who was the first Comptroller of the Treasury. Judge Tayler received honorary degrees from Western Reserve College and from Oberlin College. He was, after his graduation, superintendent of schools in Lisbon, Ohio, and then became editor of *The Buckeye State*. He was admitted to the bar in 1877, and in a few years was made a county prosecuting attorney. He was a member of the Fifty-fourth to the Fifty-seventh Congresses. He declined nomination for the Fifty-eighth Congress. He became United States district judge for northern Ohio in 1905, and had served since that year. Judge Taylor conducted the famous Brigham H. Roberts trial in the Fifty-sixth Congress. Since his appointment to the bench, in 1905, Judge Taylor had become widely known as an arbitrator in industrial disputes, and in that capacity settled the long-standing street railway war in this city. Prior to the recent gubernatorial election he was asked to enter the field as a candidate against Governor Harmon, but declined.

Hon. John F. Rodabaugh of Indiana Passes Away.

Honorable John F. Rodabaugh, a prominent member of the Allen County Indiana Bar, formerly deputy prosecuting attorney, and a representative in the state legislature for two terms, died suddenly at Ft. Wayne, Indiana, December 1, 1910. He was a man of great force of character, a close student of the law, and a forceful advocate; a graduate of Ann Arbor, and a member of the bar for about forty years.

Isaac N. Phillips

Illinois State Reporter.

The supreme court of Illinois recently paid to Honorable Isaac N. Phillips the following tribute on his retirement from the office of reporter of that court:

Springfield, Ill.
October 25, 1910.
Hon. Isaac N. Phillips,
Bloomington Ill.
Dear Sir:—

Your letter tendering your resignation as the reporter of this court is received, and in reply I am directed by the members of the court to express our sincere regrets that you feel compelled to discontinue your official relations with the court.

We take this opportunity to express to you the high appreciation we have of your faithful and efficient work, and of your uniform kindness and courteous treatment of the members of this court. The position which you have filled so acceptably for the past sixteen years is not only one requiring a very high order of legal attainments, but owing to the close and confidential relations which must necessarily exist between the reporter and the members of the court, the position is one requiring the strictest integrity. I know I express the feelings of every member of the court when I say you have measured up to the high requirements of the position in every respect.

The immense amount of work you

have done will be appreciated when it is known that the decisions which you have reported during your term of service fill 94 volumes of our Reports. Your predecessor, Mr. Freeman, held the position

from 1865 to 1894, and during his twenty-nine years of service only 116 volumes were published; but it is not alone the quantity of work that entitles you to the grateful appreciation of the bench and bar of the state, but we are glad to testify that in our opinion the quality of your work is unexcelled.

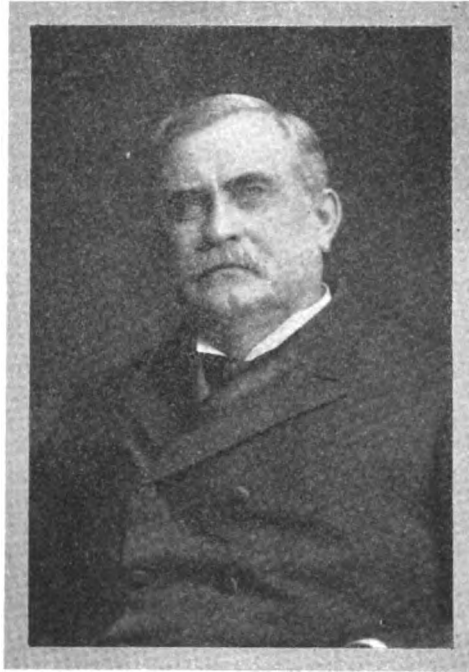
We are pained to have you leave this court; but while official associations must be severed, we assure you that the feeling of friendship which each member of the court

entertains for you will go on through life.

Very sincerely yours,

Alonzo K. Vickers,
Chief Justice.

It is an exceptional service that Mr. Phillips has rendered to the bench and bar of Illinois. Comparison of the work of those who report judicial decisions can be justly made only by very careful consideration, and by those who give the matter much study. There is a great difference in the quality of the work done by different reporters. Some of it is



ISAAC N. PHILLIPS

admirable, and some of it much less so. It is no exaggeration to say that no court in this country has had a higher grade of work in the reporting of its decisions than that which has been done by Mr. Phillips for the supreme court of Illinois. That court may well say that the quality of his work is unexcelled.

The career of Mr. Phillips is a good example of what an American boy of good brains and sterling character can achieve. He was born on a farm in Tazewell county, Illinois, October 24, 1845. When he was a little past eighteen years of age, he entered the Union Army as a private soldier in company A of the 47th Illinois infantry. After discharge from the Army, he again attended school for a short time in Peoria, Illinois, and then entered the Illinois Wesleyan University, at Bloomington, Illinois, where he continued three years. Though he did not finish his course, because of straitened circumstances, that institution subsequently conferred upon him the degree of Master of Arts. After leaving college, he taught school for a year, and then began to study law in the office of Robert G. Ingersoll at Peoria. Afterwards, he went through the law department of the old Chicago University, and took the degree of Bachelor of Laws June 29, 1871. He was then only twenty-six years old. He immediately began the practice of law at Bloomington, and was for twenty years in partnership with Governor Joseph W. Fifer. From 1885 to 1889 he was master in chancery of McLean county, Illinois, after which he was chairman of the railroad and warehouse commission of Illinois for four years. Since 1894 he has been reporter of the decisions of the supreme court of Illinois until October of the present year, when he resigned. Mr. Phillips has been frequently chosen to make addresses on important occasions. At one of them he spoke on Abraham Lincoln. That address has been published in book form. Of all the tributes that have been paid to Abraham Lincoln, this is one of the most genuine and admirable. In his retirement from office, Mr. Phillips carries many good wishes from the bench and

the bar for the fullest enjoyment of his well-earned leisure.

Sir John Bingham's Retirement from the Bench.

Sir John Bingham, in his farewell address to the bar recently delivered in the probate and divorce court, observed: "Of course my judicial acts have been criticized, and often adversely, and perhaps rightly. But no judge should complain of criticism; for a judge who is never worth criticism is probably never worth anything at all. I am reminded of a conversation I once had with Lord Watson. It took place a long time ago when I was more outspoken than I ever venture now to be. I told him I thought he interrupted counsel's arguments too often with his criticisms. 'Eh, mon,' he answered, 'you should never complain of that, for I never interrupt a fool.' And so it is with a judge and the press."

Hon. Simon P. Wolverton of Pennsylvania Dies.

Simon P. Wolverton, ex-state senator and ex-congressman from this district and one of the most prominent attorneys in that state, died suddenly at his home in Sunbury, Pennsylvania. He was found dead in his chair, death being caused by a stroke of paralysis.

In 1878 he was chosen by the Democratic party to fill the unexpired term of A. H. Dill in the state senate, Mr. Dill having resigned to become a candidate for governor. He was subsequently twice re-elected.

In 1890 he was elected to Congress and was re-elected in 1892. His name was several times presented to Democratic conventions as a candidate for governor, and Governor Stone offered him a place on the supreme bench, to fill an unexpired term, but he declined the offer.

He was attorney for the Philadelphia and Reading Coal & Iron Company, the Lehigh Valley Coal Company and Coxe Brothers & Company, and their allied interests. One of his greatest achievements was the part he took in the settlement of the great coal strike by arbitration.



Where the Danger Lay.—The judge of the juvenile court, leaning forward in his chair, looked searchingly from the discreet and very ragged pickaninny before his desk to the ample and solicitous form of the culprit's mother.

"Why do you send him to the railroad yards to pick up coal?" demanded his Honor. "You know it is against the law to send your child where he will be in jeopardy of his life."

"'Deed, jedge, I doesn't send 'im; I nebber has sent 'im, 'deed"—

"Doesn't he bring home the coal?" interrupted the judge, impatiently.

"But, jedge, I whips 'im, jedge, ebbery time he brings it, I whips de little rapscallion till he cayn't set, 'deed I does."

The careful disciplinarian turned her broad, shiny countenance reprovingly upon her undisturbed offspring, but kept a conciliatory eye for the judge.

"You burn the coal he brings, do you not?" persisted the judge.

"Burns it—burns it—cose I burns it. W'y, jedge, I has got to git it out ob de way."

"Why don't you send him back with it?" His Honor smiled insinuatingly, as he rasped out the question.

"Send 'im back, jedge!" exclaimed the woman, throwing up her hands in a gesture of astonishment. "Send 'im back! W'y, jedge, ain't yo' jest done told me I didn't oughter send my chile to no sech dange'some and jeopardous place?"—Youth's Companion.

An Offended Defendant.—An old darkey was under indictment for some trivial offense and was without counsel. The judge appointed a lawyer to defend him who had never tried a case in court.

As he walked forward to consult with

his client, the prisoner turned to the judge and said:

"Yo' Honah, am dis de lawyer what am depointed to offend me?"

"Yes."

"Well," continued the old darkey, "take hit away, jedge; I pleads guilty."—Central Law Journal.

A Considerate Court.—A cornfield judge in Oklahoma was hearing a trial for stealing. The defendant testified. Then the prosecuting attorney moved to strike out his testimony as irrelevant, immaterial, and half a dozen other undesirable things.

"What else has the defendant offered in defense?" asked the judge.

"Nothing, your honor," the prosecuting attorney replied.

"Well," ruled the judge, "I won't strike it out. Do you suppose I want to take away the only defense he has?"—Rochester Herald.

He Drew the Line.—One of Judge Lindsey's stories is of a poor Irishman who was arrested on the Fourth of July for punching another man in the face. When the judge asked him if he was guilty, he said, "Sure, that's what I'm here to find out." The judge told him he was charged with striking a man. "But wasn't it the Fourth of July, and couldn't I have a bit of fun?" he asked. "Yes," said the judge, "but your right to having fun ended where this man's nose began."—Picayune.

Even the Children.—Ex-Governor Pennypacker, condemning in his witty way the American divorce evil, told at a Philadelphia luncheon an appropriate story, says the Washington Star.

"Even our children," he said, "are becoming infected. A Kensington school teacher, examining a little girl in grammar, said:

"What is the future of 'I love?'"

"'I divorce,' the child answered promptly."—Picayune.

Cupid in Court.—"My girl's parents won't let me see her. Can't I get out an injunction or some sort of a law paper?"

"I should think a writ of attachment would be in order."—Courier-Journal.

Profanation of the Bean.—A Boston policeman was leading a sobbing youngster toward the station house. "What has he been doing?" we asked. "Using a bean-shooter," answered the man behind the star. "Is that a crime?" we queried. "Not exactly," he replied, "but it is considered a sacrilege to put beans to such use in this town."—Chicago News.

Full Particulars.—Lawyer—Now what did you and the defendant talk about?

Witness—Oi t'ink about fifteen minutes.

L.—No, no; I mean what did you talk over?

W.—We talked over the tiliphone, sorr.—Boston Transcript.

Cruel Treatment.—The Judge—Can you describe any specific act of cruelty on the part of your husband?

The Complainant—I should say I can! Whenever he had anything to say to me he'd call me up on the telephone and say it and then disconnect before I had a chance to talk back to him.—Chicago News.

A Little Ananias Club.—"That's so, Judge; I was drunk, all right," the man at the rail admitted gently, even with a note of pathos in his thick voice. "I don't deny it, Judge, but I'll tell you just how it was. I've got a sick wife at home, terrible sick; nobody to do for her but me. I haven't had my clothes off nor laid down for four nights. When I went out last night I—well, I just had to have a bracer, Judge, and I got a

little too much under my belt; that's so. The woman's all alone up at the house, Judge. I'll have to get back somehow."

"That's queer," interrupted the Magistrate, with quiet conviction. "We received a letter from your wife and she asks me to keep you locked up as long as possible. Says you're in the way at home—a nuisance. She is glad to be rid of you."

Silently, without apparent surprise, the prisoner shuffled toward the door on his way to jail. Then he looked back.

"Say, Judge," he called out, "there are two awful liars in this room, and I'm one of 'em. I ain't got no wife!"—Exchange.

True Gift for Fiction.—In a New Brunswick village a town character who preferred emphasis to the verities was a witness in a petty trial involving an auger. He positively identified it as the property of the parties to the suit.

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"I have known that auger," said the witness impressively, "ever since it was a gimlet."—Everybody's.

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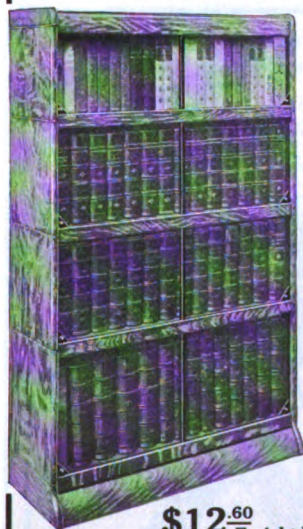
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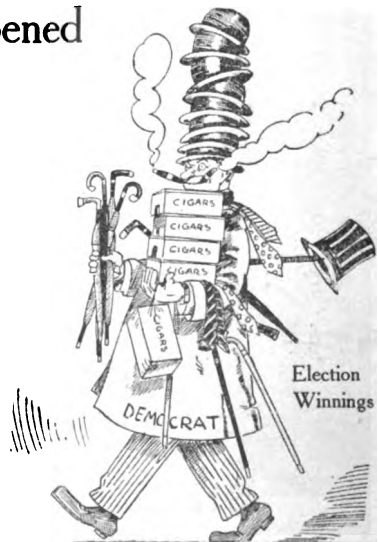
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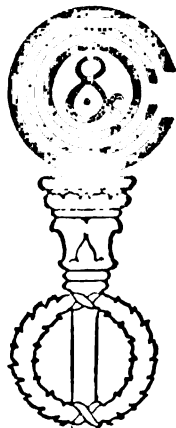
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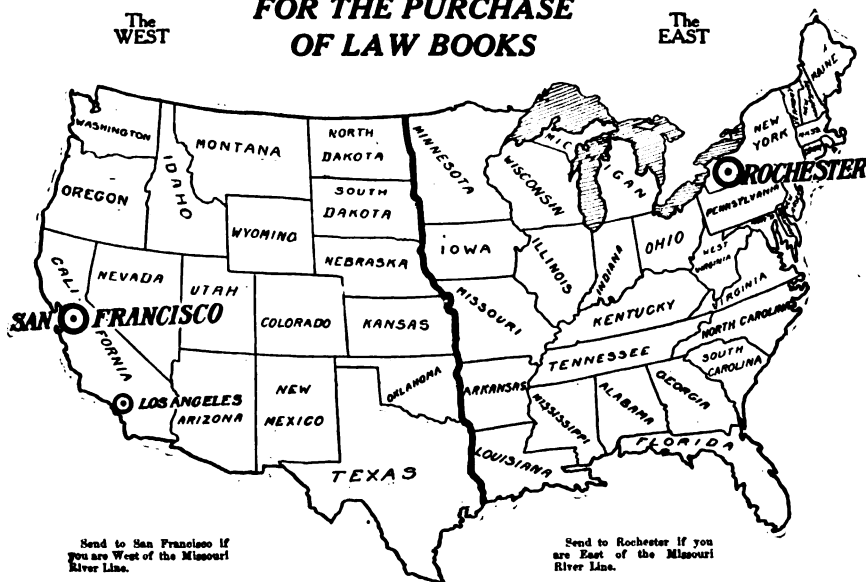
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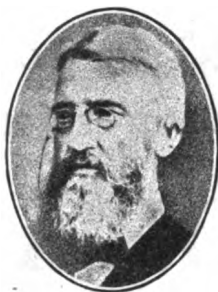
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The New Associate Justices of the Supreme Court

Justice Willis Van Devanter was born at Marion, Indiana, April 17, 1859. He was educated at De Pauw University and the Cincinnati Law School, and then returned to Marion, in 1881, to practise his profession. He remained there but three years, when he removed to Cheyenne, Wyoming.

His legal talent soon won him recognition at the Wyoming bar, and in 1886 he was appointed a commissioner to revise the Wyoming statutes. In 1887 he was elected city attorney of Cheyenne and served a two-year term, resigning in 1888 to take a seat in the territorial legislature. Upon the completion of his legislative term, he was made chief justice of the supreme court of Wyoming, serving two years in that position.

His next appointment took him into the Federal service, when he was made an Assistant Attorney General and was assigned to the Department of the Interior. He received the appointment in 1897 and served until February 18, 1903, when he was appointed a United States circuit judge and assigned to the eighth circuit. He was professor of equity pleading and practice from 1898 to 1903, and professor of equity jurisprudence from 1902 to 1903, in Columbian, now George Washington, University.

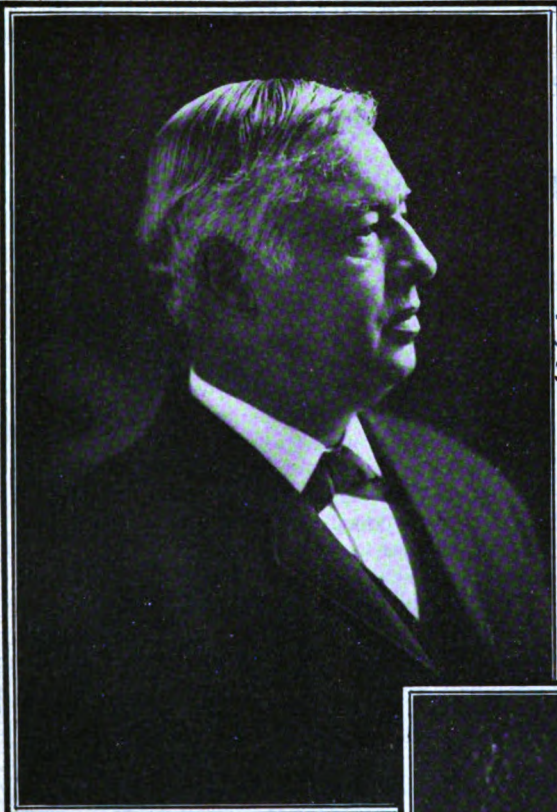
The most recent case of special note in the decision of which Judge Van Devanter participated is the government's anti-trust case against the Standard Oil Company.

Physically as well as mentally Justice Van Devanter is a strong man. He applies himself to his work with all the intensity and vigor of youth, and accomplishes a great deal. His exercise is a daily horseback ride, fast and vigorous. The West is ably represented in the selection of Justice Van Devanter, who it is believed will prove a worthy successor to the late Justice Brewer.

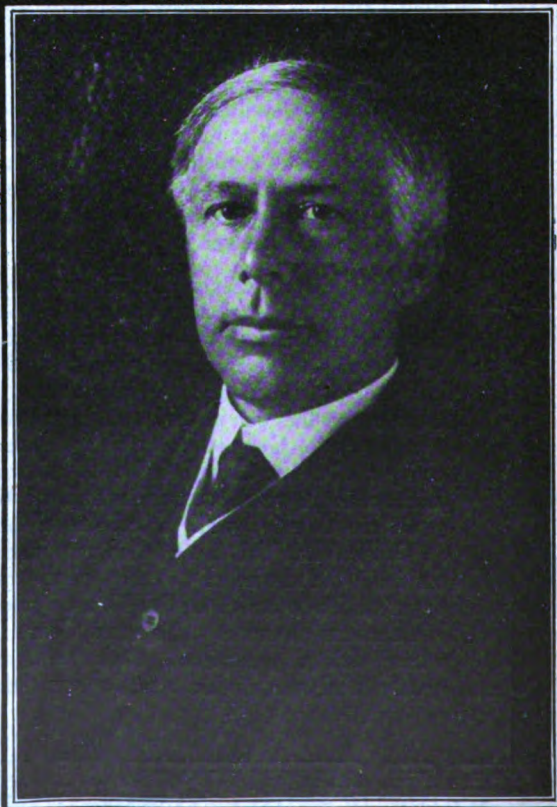
Justice Joseph Rucker Lamar was born in Ruckerville, Georgia, in 1857. He is described as an old-fashioned Southern gentleman, of charming manner, and of that type in which the South takes most pride.

He was educated at the University of Georgia, Washington, and Lee University at Lexington, Virginia, and at Bethany College. He was admitted to the bar in 1879 and practised at Augusta. He was a member of the Georgia legislature for three years, and a commissioner to codify the laws of Georgia in 1895. In 1903 he became an associate justice of the supreme court of Georgia, where he served two and one-half years, and then resigned. He is one of the leaders of the Southern bar.

To President Taft have fallen responsibilities which are really opportunities in the choice of members of the Supreme Court, and to these opportunities he has risen with his usual instinctive wisdom and patriotism. He has strengthened the Supreme Court by the addition of two men whose ability, professional attainments, and judicial experience well qualify them to adorn the bench of our highest tribunal.



Joseph R. Lamar
Augusta Ga.



Willis Van Devanter
Cheyenne Wyo.

The Ethics of Advocacy in an Unjust Cause.

BY EDWIN S. OAKES, B. A.

"But there is yet another exception against the Professors of our Law, namely, That wittingly and willingly they take upon themselves the defense of many bad causes, knowing the same to be unjust when they are first consulted with and retained. And this is objected to by such as presume to censure our Profession in this manner. In every Cause between party and party (say they) there is a right and there is a wrong; yet neither the one party nor the other did ever want a Counsellor to maintain his Cause."—*From the preface to the Reports of Sir John Davis, Chivalier, Attorney General of the King in Ireland (Folio), London, 1674.*



THE frequently uttered reproach, that the profession of the advocate is supported by the indiscriminate defense of right and wrong, is as old as the profession itself; and the worthy gentleman from whose defense of the lawyer who is so unfortunate as to have espoused the losing side the language which prefaces this article is taken is but one of a host who have rallied to refute an imputation which they have rightly felt to be undeserved. To undertake the discussion of a subject already so thoroughly discussed requires a plea in justification, which may be found in the currency of the attempts made in recent years through the discussion and adoption of codes of ethics, to crystallize the ethical consciousness of the bar into statements of basic principles of professional conduct.

It is not an overstatement to say that the typical lay view is that the lawyer is no more than a paid mercenary whose arms are at the service of whomsoever may choose to employ him, no matter how unrighteous the cause or how flagrant the guilt of the client. This view may justly be resented as both erroneous

and indiscriminating,—erroneous, in that it fails to take into account the true function of the advocate in the administration of justice, and to apprehend the exact nature of the duties which he owes respectively to the court, to his client, and to society; indiscriminating, in that it condemns alike the fact of advocacy and the act in which such advocacy exceeds its proper bounds. At the same time it may be admitted that it is difficult for the average layman to conceive of the lawyer as being at the same time the minister of justice and the partisan of his client. It may even be difficult for the lawyer himself to grasp the true significance of his relation. It must, therefore, be our task to investigate the duties of such relation and to ascertain the bounds within which the lawyer may properly exert himself in advocating a cause in the righteousness of which he may not believe.

Allusion is made in the *Pickwick Papers* to an ingenious gentleman who by dint of "cramming" on China in the encyclopedia under the letter C, and on metaphysics under the letter M, combined the information thus obtained to evolve an article on Chinese Metaphysics. Legal ethics is not composed upon such a formula. It is not such an

agglomeration of high sounding phrases of "fidelity to a cause" and "loyalty to a client" as may salve the lawyer's conscience in doing "for a guinea," in Macauley's phrase, "with a wig on his head and a band around his neck . . . what without these appendages he would think it wicked and infamous to do for an empire."¹

The lawyer's code of professional conduct is not *sui generis*, but is based upon sound morality. It is not an artificial system of rules inapplicable to laymen, but consists in the application to the profession's peculiar needs of the great principles which underlie the duty of man to himself and to mankind. It has been well and forcefully said: "There is no difference between personal and professional ethics. The foundations on which the distinction between right and wrong rest go deeper down than a man's occupation, and are unaffected by any such accident as the choice of his business or his methods. They are in the nature of things fixed and immovable. The lawyer who overlooks this important truth and assumes the existence of one code of morals for the man, and another and less exacting one for the practitioner will sooner or later find that his lower code has no absolute provisions, no fixed line, no distinct boundary between the permitted and the forbidden, for when once the known limits of the higher code have been passed, the questions 'How far to go? When and where to stop?' are to be determined, not by our conscience or our moral instincts, for these have already been disregarded, but by an intellectual calculation of the necessities of the situation, and of the risks of exposure, loss of professional standing, or punishment."² To this may be added another author's pithy statement: "The advocate does not cease to be a human being with all his ethical and religious obligations, a citizen with all his political obligations to his country and her laws, and a gentleman with all the obligations of honor and civil intercourse. He is no morally privileged person, as no man can be."³

What then, in the light of these general principles, should be the action of an advocate whose services are sought in a case which he believes to be unjust? In pursuing this inquiry in detail, let us separately consider civil and criminal cases.

In the first place it may be conceded that the lawyer is not bound to accept a retainer in any case which is distasteful to him; and a fastidious sense of honor may lead him to reject employment which according to established standards he might accept without impropriety. The story is told of a one-time member of the bar of western New York, a judge of the supreme court, famous in his day for his pungent manner of expression, that he was at one time sought by a client whose legal right was as clear as his moral claim was doubtful. Much to his surprise, the judge declined the case. The client was attempting to expostulate with him when the judge effectually silenced him with the statement, uttered with the greatest deliberation, and with the judge's own inimitable twang: "Mr. —, I have made up my mind that you are a damn—mean—man, and I don't want to have anything to do with you." Horace Binney wrote in his private record: "I never prosecuted a cause that I thought a dishonest one, and I have washed my hands of more than one that I discovered to be such after I had undertaken it, as well as declined many which I perceived to be so when first presented to me."⁴

But though a lawyer may with propriety decline, may he with equal propriety undertake the conduct of a doubtful case?

The devoted and indefatigable Boswell, presenting one of his numerous sight drafts upon the wisdom of his patron, once asked Dr. Johnson:⁵ "But what do you think of supporting a cause which you know to be bad?" To which the doctor replied, "Sir, you do not know it to be good or bad till the judge determines it. * * * An argument which does not convince yourself may convince

¹ Essay on Bacon.

² Williams, Legal Ethics.

³ Lieber, Political Ethics.

⁴ Sketch of Horace Binney, by Charles Chauncey Binney.

⁵ Boswell, Life of Johnson.

the judge to whom you urge it; and if it does convince him, why then, Sir, you are wrong and he is right. It is his business to judge, and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion."⁶

This contains much of truth, but does it contain the whole truth? Can a lawyer plead at the bar of conscience that it was not his business to sit in judgment? Is it his duty to institute an independent investigation into the merits of a case? Here even the highest minded differ: and the fact of such difference shows the question to be one of taste rather than of principle.

"It was the habit of George Wythe," says Mr. L. G. Tyler, "in case he entertained any doubts of the truth of his client's statements, to require of him an oath, and if any stage of the case he found that deception had been practiced upon him, the fee was returned and the case abandoned."

On the other hand, Dr. Showell Rogers, in an article in the *Law Quarterly Review*, argues that facts may not only differently impress different minds, but operate upon the same mind differently according as they are or are not fully threshed out; that it is impossible for an advocate to determine in advance that his client is right; that the result of such a practice would be that all the worst cases would ultimately find their way in-

to the hands of the unscrupulous, to the detriment of the interests of public justice; and that such course would make the lawyer's character a part of his client's case. In this connection he quotes from a private letter written by Lord Halsbury as follows: "A thesis has been propounded on the other side more extravagant, and certainly more impossible of fulfilment; that is, that an advocate is bound to convince himself, by something like an original investigation, that his client is in the right before he undertakes the duty of acting for him. I think such a contention ridiculous, impossible of performance, and calculated to lead to great injustice. If an advocate were to reject a story because it seemed improbable to him, he would be usurping the office of the judge, by which I mean the judicial function, whether that function is performed by a single man, or by the composite arrangement of judge and jury which finds favour with us. Very little experience of courts of justice would convince any one that improbable stories are very often true notwithstanding their improbability."⁷

Much of the literature of legal ethics is concerned with the propriety of a lawyer's undertaking the defense of one whom he believes to be guilty of crime. Here, though the ethical aspect is more clearly outlined, the same considerations apply as in civil cases.

Although a lawyer may properly decline such employment, circumstances

⁶ The same idea is expressed by Baron Bramwell in *Johnson v. Emerson* (1871) L. R. 6 Exch. 367: "A man's rights are to be determined by the court, not by his attorney or counsel. It is for want of remembering this that foolish people object to lawyers that they will advocate a case against their own opinions. The client is entitled to say to his counsel, I want your advocacy, not your judgment: I prefer that of the court."

The quaintness of the language used by Sir John Davis in putting forth a somewhat similar argument warrants its reproduction in this connection: "For when doth the right or wrong in every Cause appear? when is that distinguished and made manifest? Can it be discovered upon the first commencement of the Suit, and before it can be known what can be alleged and proved by either party? Assuredly it cannot. And therefore the Counsellor, when

he is first retained cannot possibly judge of the Cause, whether it be just or unjust, because he hears only one part of the matter; and that also he receives by information from his Client, who doth ever put the Case with the best advantage for himself. But when the parties have pleaded and are at Issue, when they have examined witnesses in course of equity, and he descended to a Trial, in course of Law, after publication and hearing in the one case, and full evidence delivered in the other; then the learned Counsel on either side may perhaps discern the right from the wrong, and not before. But then are the Causes come to their catastrophe, and the Counsellors act their last part. And yet until then the true state of the Cause on both sides could not possibly be discovered."

⁷ *The Ethics of Advocacy*, *Law Quarterly Review* for July, 1899.

may be such as to impose upon him an obligation to undertake the case. Such was the obligation felt by William H. Seward, who, because he believed the prisoner to be insane, volunteered, in the face of strong popular feeling, to defend a friendless negro, indubitably demonstrated to have committed an atrocious murder. In his address to the jury, he thus expressed the sense of duty by which he was actuated: "I am not the prisoner's lawyer. I am, indeed, a volunteer in his behalf, but society and mankind have the deepest interests at stake. I am the lawyer for society, for mankind, shocked, beyond the power of expression, at the scene I have witnessed here of trying a maniac as a malefactor."⁸

The right of an advocate to defend a person accused of crime does not depend upon the guilt or innocence of the accused, but upon his right to be defended.⁹ Says Judge Sharswood: "Every man accused of an offense has a consti-

tutional right to a trial according to law; even if guilty he ought not to be convicted and undergo punishment unless upon legal evidence; and with all the forms which have been devised for the security of life and liberty. These are the panoply of innocence, when unjustly arraigned, and guilt cannot be deprived of it without removing it from innocence. He is entitled, therefore, to the benefit of counsel to conduct his defense, to cross-examine the witnesses for the State, to scan, with legal knowledge, the forms of the proceeding against him, to present his defense in an intelligible shape, to suggest all those reasonable doubts which may arise from the evidence as to his guilt, and to see that if he is convicted it is according to law."¹⁰

The consensus of opinion as to this phase of the lawyer's ethical obligations is expressed in the code of ethics adopt-

⁸ William H. Seward, in defense of Freeman.

⁹ It is interesting to note that in England, until the enactment of Stat. 6 & 7 William IV. chap. 114, the right of a person accused of felony to the assistance of counsel was formerly greatly restricted.

Says Blackstone: "It is a settled rule at common law that no counsel shall be allowed a prisoner upon his trial upon the general issue in any capital crime, unless some point of law shall arise proper to be debated. A rule which (however it may be palliated under cover of that noble declaration of the law, when rightly understood, that the judge shall be counsel for the prisoner; that is, shall see that the proceedings against him are legal and strictly regular) seems to be not at all of a piece with the rest of the humane treatment of prisoners by the English law. For upon what face of reason can that assistance be denied to save the life of a man which yet is allowed him in prosecutions for every petty trespass? Nor indeed is it, strictly speaking, a part of our ancient law; for the Mirror, having observed the necessity of counsel in civil suits, 'who know how to forward and defend the cause, by the rules of law and customs of the realm,' immediately afterwards subjoins, 'and more necessary are they for defence upon indictments and appeals of felony than upon other venial causes.' And the judges themselves are so sensible of this defect that they never scruple to allow a prisoner counsel to instruct him what questions to ask, or even

to ask questions for him, with respect to matters of fact; for as to matters of law arising on the trial, they are *entitled* to the assistance of counsel." 4 Bl. Com. 355.

The practice, however, is defended by Sir John Davis on ethical grounds in the following passage, the fallacy of which, of course, lies in the assumption that an accusation necessarily imports guilt: "And as our Judges do discountenance bad Counsellors, so doth our Law abhor the defense and maintenance of bad Causes, more than any other Law in the world besides. For by what other Law is Unlawful maintenance, Champertie, or Buying of titles, so severely punished? By what other law doth the Plaintiff *pro falso clamore*, or unjust vexation, or the Defendant for pleading a False Plea, pay an amerciamient or fine to the publick Justice? And this is one cause, among others, why our Law doth not allow counsel unto such as are indicted of Treason, Murder, Rape, or other capital crimes. So as never any Professor of the Law of England hath been known to defend (for the matter of fact) any Traitor, Murderer, Ravisher, or Thief, being indicted and prosecuted at the Suit of the King. *Turpe reos empti miseris defendere lingua*, saith the Poet. And therefore it is an honour unto our Law, that it doth not suffer the Professors thereof to dishonour themselves (as the Advocates and Orators in other countries do) by defending such Offendours. For example whereof we have extant divers Orations of Cicero, one pro C. Raberio perduellionis reo; another pro Roscio Amerino, who was accused of Parricide; and another pro Milone, who was accused of Murder."

¹⁰ Sharswood, Legal Ethics.

ed by the American Bar Association as follows: "It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense."¹¹

But, so far as our present topic is concerned, all this is beside the mark. Even after admitting the danger of passing judgment in advance, and giving due recognition to the fact that confessions of guilt have been known to prove unreliable, the fact remains that not every case is, or may properly be regarded as, a doubtful one: and to pretend that the advocate may always justify himself on this ground is but a shallow sophistry that deceives nobody. The case may be so clear and the facts so little in doubt as to produce a moral conviction of the injustice of the cause, or of the guilt of the client. Here is the crux of the whole matter; and to solve the difficulty we must proceed to consider the true function of the advocate.

To say that the advocate acts solely as the mouthpiece of his client, and so may speak for the unjust as well as for the just, for the guilty as well as for the innocent, without any violation of ethical obligations, is to attempt his justification upon a ground that cannot be wholly satisfactory.

Let us instead take the higher ground that his true function is to promote the administration of justice, and consider whether the advocacy of an unjust cause is inconsistent with that function. Now, human justice cannot undertake to deal with each and every man according to his just deserts. Its domain must ever

be narrowed by human fallibility. Since the men concerned in its administration can be neither all-wise nor all-good, experience has demonstrated the wisdom of proceedings according to established rules, that justice may be done in the mass though it may fail of being done in the particular. This being so, the interests of society demand that the litigant be permitted to urge his claim, whatever its ethical aspect may be, or to set up his defense, no matter how unconscionable, or to demand that his guilt be established according to the forms of law, in order that in the ninety and nine cases the right may prevail and the innocent be exonerated, even though in the hundredth case the just cause may suffer defeat, and the guilty escape punishment. And so when the individual case is viewed, not by itself, but in the larger aspect, it will be perceived that the advocate is promoting the administration of justice by contending for the legal rights of his client, whatever may be his private opinion as to such client's deserts. Said Sidney Smith, in an assize sermon preached before Mr. Justice Bayley and Baron Hullock: "Justice is found, experimentally, to be most effectually promoted by opposed efforts of practiced and ingenious men presenting to the selection of an impartial judge the best arguments for the establishment or explanation of the truth. It becomes then, under such an arrangement, the decided duty of an advocate to use all the arguments in his power to defend the cause he has adopted, and to leave the effects of these arguments to the judgment of others."

The lawyer's function being ascertained, the question next arises, What is to be the manner of its exercise? Having accepted a retainer in a presumably unjust cause, what are the ethical obligations of the lawyer with respect to the conduct of the case?

In a civil case, his professional duty requires him to secure for his client every advantage which the law permits.¹² It is not his business as an ad-

¹¹ According to a press report, the code of legal ethics submitted to the New York County Lawyer's Association forbids a lawyer to accept as a client a man whom he knows to be guilty. Certainly if a lawyer has actual knowledge of as distinguished from mere belief in, a man's guilt, as where he was an eyewitness of the crime, in that case he must be a witness, and so is disqualified from acting as counsel; but if such provision is intended to inhibit the acceptance of a retainer because of mere belief in the guilt of the accused, it is indeed, as the report characterizes it, a novelty in the history of lawyer's ethics.

¹² Baron Puffendorf expresses the opinion that in civil cases "it doth not appear that the Advocate can with a safe Conscience hinder the injured Party from obtaining

vocate to correct the law, but to obtain its enforcement for his client's benefit. He may properly advise him of his right to plead such defenses as infancy, usury, or the statute of limitations. He is bound to require his adversary to demonstrate his title to the remedy sought, irrespective of the merits of the case. As Dr. Showell Rogers says in the article to which reference has before been made,⁷ if legal rights are to be respected at all, it would be difficult and dangerous to allow any vague or general considerations of expediency or even of justice, real or supposed, to prevail over them.

At the same time, where the equities are manifestly against his client it is clearly the lawyer's duty, albeit its performance may require some courage, to declare his own view of the client's moral duty and to urge him to submit to a settlement of the case.¹³

But it is in the conduct of criminal cases that the advocate is more likely to be perplexed by apparently conflicting obligations. Is he, he may ask himself, in exerting himself to procure his client's acquittal playing the nurse to villany? Does he justly lay himself open to the charge of being an accessory after the fact? To which we may answer in the

his rights as soon as possibly he may. And therefore in such Controversies, we condemn as unlawful, not only false Allegations and feigned Reasons, but likewise all dilatory Exceptions and Demurs; in as much as all there are a Let and Hindrance to the one Party from paying what he owes; and to the other from receiving what is due to him."—Law of Nature, bk. 4, chap. 1.

¹³ If a lawyer, says Sir John Davis, "fortune to be engaged in a Cause, which, seeming honest in the beginning, doth in the proceeding appear to be unjust, he followeth a good counsel of the School-man, Thomas Aquinas: "Advocatus si in principio credit causam justum esse, quae postea in processu apparet esse injusta, non debet eam prodere, ut scilicet alteram partem juvet revelando causae suae secreta: potest tamen, et debet, causam deferere, vel eum cujus causam agit inducere ad cedendum, sive ad componendum, sine adversarii damno."—Thom. Aquinas, 2. 2. Quaest, 71, art., 3.

light of what has hereinbefore been said, No, if his advocacy is exercised within its proper bounds.

There is a famous passage in the speech of Lord Brougham in defense of Queen Caroline upon her trial in the House of Lords, in which he said: "An advocate, by the sacred duty which he owes his client, knows, in the discharge of that office but one person in the world, THAT CLIENT AND NONE OTHER. To save that client by all expedient means—to protect that client at all hazards and costs to all others, and amongst others to himself—is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate it should unhappily be, to involve his country in confusion for his client's protection." But having regard to its context and the circumstances under which it was uttered, there can be no doubt that this passage was never intended as a deliberate definition of the duty of an advocate; and Lord Brougham himself has explained that it was simply intended as a menace, that if the bill was pressed beyond a certain point he would not only set up a recriminatory case against the King, but would also impeach the King's own title by proving that he had forfeited the Crown by his marriage to a Roman Catholic (Mrs. Fitzherbert) while heir apparent. However, as Coleridge in commenting on the passage remarks: "It exactly suited the caliber of those who were to profit by it, and it has stuck like a burr to the profession ever since."

But others have expressed broader and higher conceptions of the duties of an advocate. Lord Brougham having used somewhat similar language at a dinner given to the great French advocate, Berryer, in 1864, the then Lord Chief Justice of England, Sir Alexander Cockburn, in responding to the toast of "The

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Can The Lawyer Advertise?

BY L. B. ELLIOTT

of the Elliott Advertising Agency, Rochester, N. Y.

NOTE—We are fortunate in being able to present to our readers, upon the question of Advertising by Lawyers, the views of a professional advertising man. Mr. Elliott is a well known writer and lecturer upon "The Art of Advertising."—Ed.



The Author



WHEN the editor of CASE AND COMMENT requested me to tell the readers of this magazine how the lawyer can advertise, he handed me a formidable looking package of abstracts bearing on the case, with the suggestion that the material contained therein might give direction to my thoughts on the subject. A careful examination of these notes would seem to show that if a lawyer is to be considered a respectable member of his profession, he must studiously avoid all attempts to bring business to him, and must be content to sit down in his office patiently waiting for something to turn up. The basis of this code of "ethics" appears to me to be the assumption that, should the legal profession permit itself to advertise, such advertisements would tend to stimulate the laity to bring actions at law not justified, and which would not otherwise be brought.¹ Without desiring to enter into the discussion of so time-honored a principle, it would appear to an ordinary individual that, should such unjust actions be stimulated by legal advertising, it is still within the province of the practitioner to *decline to accept* as his clients those who wish to bring such unjustified actions. Notwithstanding the fact that lawyers are not permitted to advertise, every lawyer does advertise himself and his business, favorably or unfavorably every day he lives. Every act of a business man or of a professional man advertises his business in some way. The public gains an impression from

everything that exists or is done by or in connection with a man and his business, and such impressions have a determining effect when business is to be placed.

Every man is obliged to live and perform certain functions, and whether these acts make for his success as a business man depends almost entirely upon his mental attitude toward those acts and their effect upon his business. If a man assumes the attitude that advertising is not for him, that it is undignified, that it has no value for him as a lawyer, that it is not worth considering, he will surely miss the majority of the opportunities that naturally present themselves and that might be made to present themselves to create that favorable impression upon the public mind which would tend to the growth of his prestige and the increase of his clientage. If, on the other hand, the lawyer says to himself, "Advertising is necessary, desirable, legitimate, dignified, and profitable, and every effort should be made to advertise and to create a favorable impression upon the public," an endless chain of opportunities will develop whereby this end can be attained.

In what I am about to say I wish to be understood as thoroughly in sympathy with the dignified spirit in which the high class attorney conducts his business, and that I am not an advocate of any method that might be called questionable, undignified, or in any way calculated to lower the standard of the legal profession in the public mind. I do, however, believe, that there are many ways open to

the lawyer, by which he can extend his acquaintance among the people, make them acquainted with his ability as a lawyer, and with the results which he attains in the work entrusted to him, and I thoroughly believe that these methods should be employed, because, if a man is engaged in business or in a profession, he is in duty bound to make the most of his opportunities, and to become as successful as his ability and his environment will permit. Otherwise he is not doing full justice to the gifts that have been given him and to the opportunities that are placed within his grasp.

Perhaps the greatest factor in the success of the professional man is personality. Every man has, as the gift of nature, a certain personality which may be likened to a diamond in the rough. A rough diamond is more or less attractive and desirable according to the condition in which nature has left it, but when worked upon and skilfully fashioned, the roughest diamond can be made far more attractive, valuable, and desirable. Thus every man can increase the value of his own personality by cultivating it, and in order to cultivate personality successfully it is necessary to follow a definite plan. I have observed that many lawyers seem to have little regard for this great factor in their business success. It is within the power of every man to be neat in his personal appearance and cleanly in his habits. There are few men who can not cultivate an agreeable presence. There is perhaps no profession in which the element of confidence is a greater element for success than in the legal profession. Careful study and constant practice will enable almost any man if he wills to do it, to attain a method of procedure and a system of dealing with his clients that will inspire confidence. Carelessness and apparent indifference to the statements and wishes of the clients are, in my opinion, the greatest destroyers of confidence, and should be carefully avoided.

The location and furnishing of the business office offer exceptional opportunities for advertising. It is but natural for business to go to the man who is located where many people come and go.

Such locations are apt to be more expensive, but it would not be possible for the landlord to receive greater rents for space in such locations if they were not worth more. The very fact of a lawyer's office being located in a prosperous business district in a building well-cared for, is in itself a recommendation for his enterprising character and business judgment. A well-furnished, clean, light, and orderly kept lawyer's office is another splendid recommendation, and invites the confidence, respect, and patronage of all who may enter it, and is good advertising.

The employees of the lawyer add materially to his success if they are presentable in appearance, intelligent, and trained to receive the public courteously, promptly, and with an appearance of interest in the requirements of the prospective client.

It is needless to say that prompt and efficient service, combined with careful and able attention to every detail of the business placed in the lawyer's hands, is perhaps the greatest advertisement that he can have and the one on which he now depends for his advertising. Many lawyers, I believe, do not realize the great importance of prompt service in legal matters. Human nature is much the same everywhere, and it is a fact that commercial houses who give prompt service are forgiven many other shortcomings, whereas those that may give better value with dilatory service do not find favor with the public. The man who appreciates prompt service from the butcher or baker is equally appreciative and insistent upon prompt service in legal matters, and, when he does not get it, becomes restive, and is apt to look about for others to serve him. No amount of ability or individual brilliancy can entirely overcome the lack of businesslike methods in dealing with the public, and whereas many brilliant men are successful notwithstanding slothful and unbusinesslike methods, how much more successful would they be were they alive to the great value to them of promptness, cheerfulness, courtesy, and directness in all matters wherein they come in contact with the public.

The social activities of every man re-

flect on his business, and this is especially true in the case of the professional man, for it is by this means that he is able to extend his acquaintanceship and to make more and more people acquainted with his personality, and thus draw them to him, if his personality is of a likeable character.

The attitude of the lawyer toward philanthropic movements and all matters connected with the civic and political life of the community, are in the end good or bad advertising for him, whether he will or no, according to the advantage he takes of these opportunities.

I may be trespassing upon questioned ground when suggesting the desirability of cultivating the acquaintance of representatives of the press. These gentlemen can do a great deal toward spreading the knowledge of results obtained by the lawyer in his practice, without solicitation on his part, or any effort to secure "puffs" or "write-ups." There is a news story in almost every action at law, and the more important the interests involved, the greater the news value of the story. A personal acquaintance, and glad hand extended to the representatives of the press, result in keeping the name of the practitioner favorably before the public entirely without expense to him, and without violating any of the tenets of the legal code of ethics.

Membership in various clubs, secret orders, benevolent, civic, and religious organizations keeps the name of the lawyer in good company continually, and, in addition to his personal contact with the members of these societies, places his name before a large number who might otherwise not know of him.

In conclusion I wish to enter an argument in favor of the desirability of out and out publicity for the legal profession as a whole. The original idea of advertising on which the traditions of the lawyer are founded picture it as the tool of the charlatan and fakir. The first advertising was employed by medical quacks and promoters of shady schemes, the circus man and other imposters. The progress of business has practically eliminated this element from advertising, and to-day the great bulk

of the hundreds of millions of dollars spent for advertising is provided by the most solid, most conservative businesses of our country. Advertisements to-day, broadly speaking, are just as truthful, just as dignified, and just as respectable as any other part of the magazines and newspapers in which they are printed, and in many cases even more so. The highest paid writers, artists, and critics are employed in the production of this advertising matter. Its object is to give the public *reliable information* regarding the products of the manufacturer, wares of the dealer, or the services of a corporation, individual, or professional man. Surely the *statement of fact* cannot be undignified or lower the tone of any business or profession. It seems to me that the various bar associations ought to take such action as would permit the lawyer to announce his business in the public prints, and to state what particular lines of business he is prepared to handle. The public would find it a great convenience to know whether a lawyer is a general practitioner, a criminal specialist, a patent attorney, or a corporation adviser. In the regular course of my business I have frequently been asked by my own clients, "Where can I find a patent attorney?" "Where can I find an attorney who is specially posted in the drawing of contracts?" "Where can I find an attorney whose opinion I can rely upon to interpret a contract presented to me for my signature?" "Where can I find an attorney who can advise me regarding the best methods of increasing my bank discounts and maintaining my credit?" Obviously, lawyers who specialize in these things would gain by the mere statement of the fact that they do specialize in them, without the necessity of claiming exaggerated powers in producing results or making comparisons between themselves and other attorneys.

It would seem to me that there is no more reason why an attorney should not advertise in the newspapers or other public prints, in a dignified and truthful manner, than there is reason why a banking institution, an artist and advertising writer, an architect, a consulting engineer, a chemist, assayer, or other techni-

cal or professional man who has only his service to give in return for money, should advertise. All of these do advertise, and it is considered ethical and good business to do so.

Finally let me call your attention to the fact that the quack lawyer as well as the quack doctor *do advertise*, and if

there is a lowering of dignity and prestige of the legal and medical profession through advertising, it is due to the fact that the respectable practitioner *refrains from advertising* and gives over the education of the public through advertising entirely to the quack.

Two Lawyers

By James J. Montague

Erasmus Green knew lots of law; he reeked with erudition;
For years he'd poured o'er sheepskin tomes without an intermission.
He knew what Judson, J., had said in Ninth N. J. reports,
And he could reel decisions off from all the higher courts.
But, as he never blew or bragged, nobody ever guessed
That of a thousand legal minds E. Green's was much the best.
He lived and toiled in poverty; he never drew a brief,
And when he died no courts adjourned in token of their grief.

His brother John knew little law, but when a case he tried,
He threatened, blustered, sawed the air, exulted and defied.
And wise men smiled when they passed by, or looked extremely pained;
And judges fined him for contempt and called him addle-brained.
But there were always quite a few who very much admired him,
And when they got mixed up in law they quickly went and hired him.
And thus his business daily grew; for those who placed reliance
Upon his skill, though ignorant, were all good-paying clients.

Now, when his cases multiplied the wise ones said: "We guess
There must be some good reasons for this person's great success.
His fame is growing rapidly—he has a lot to do—
And therefore we will let him have our legal business, too."
And so, though Green knew more about draw-poker than the law,
He built the greatest clientele the country ever saw.
*It may be that Erasmus Green was really great and wise,
But there is this much to be said: It pays to advertise!*

—New York Evening Journal.

Dealing with Client's Money

BY RAY L. SWIFT



THE importance to a lawyer of the adoption of correct methods, and the formation and strict following of correct and safe habits of dealing with money coming into his hands, belonging to his clients, cannot be overestimated. Failure or laxity in this regard is liable to result in financial loss, in the loss of the confidence of his clients, or other members of his community who might otherwise become his clients, in possible prosecution and conviction for embezzlement or larceny, or, what is most serious of all, in his professional execution through proceedings for disbarment.

The retention by an attorney, of money belonging to his client, after demand therefor, or the fraudulent appropriation thereof to his own use, is universally regarded by the courts as sufficient ground for his disbarment.¹ Nor is payment by the attorney after commencement of disbarment proceedings, of itself sufficient defense to the action, though it may in some cases be considered in mitigation of punishment.² What is still more important, he may be disbarred though he used the money without actual intent to defraud his client, but in the hope of being able to pay it when demand should be made.³ And the fact that he has become unable to pay over the amount which he appropriated, because of the unexpected depreciation of securities deposited in a bank as collateral, is immaterial in an action for disbarment for the failure to promptly pay over the money belonging to a client.⁴

In addition to disbarment, an attor-

ney may be convicted of embezzlement or larceny, if he appropriates to his own use money belonging to his client, with intent to deprive the owner thereof,⁵ or without informing his client of its collection,⁶ or if he puts his client off with unfounded excuses.⁷ And he may be so convicted though the money remains in the bank in which he originally deposited it,⁸ though he acknowledges receipt of the money,⁹ or though he intended to replace it.¹⁰ And the demand by the client for payment is not a prerequisite to a conviction for larceny.¹¹

However, if an attorney withholds or uses his client's money without a wrongful intent,—as, where he holds the money as a fund upon which he claims to have a lien for services,¹² or believes, though mistakenly, that his client consented to his use of the money as a loan upon interest,¹³—he should be acquitted. This, it will be observed, is vastly different from the case of an attorney who misappropriates his client's money wrongfully, without any claim of right except the hope that he will be able to replace it before detection, which is the stock excuse, and probably, in the beginning, the actual belief of most embezzlers.

From the standpoint of civil liability, the failure of an attorney to promptly

⁵ *People v. Converse*, 74 Mich. 478, 16 Am. St. Rep. 648, 42 N. W. 70.

⁶ *People v. Treadwell*, 69 Cal. 226, 10 Pac. 502, 7 Am. Crim. Rep. 152.

⁷ *George v. People*, 167 Ill. 447, 47 N. E. 741.

⁸ *People v. Birnbaum*, 114 App. Div. 480, 100 N. Y. Supp. 160.

⁹ *State v. Belden*, 35 La. Ann. 823.

¹⁰ *Farmer v. State* (Tex. Crim. Rep.) 34 S. W. 620.

¹¹ *People v. Fitz-Gerald*, 130 App. Div. 124, 114 N. Y. Supp. 476, affirmed in 195 N. Y. 153, 88 N. E. 27.

¹² *State v. Temple*, 63 N. J. L. 375, 43 Atl. 697.

¹³ *State v. Smith*, 47 La. Ann. 432, 16 So. 938.

¹ 19 L.R.A.(N.S.) 414, note.

² *Ibid.*

³ *Re Rockmore*, 130 App. Div. 586, 117 N. Y. Supp. 512.

⁴ *People ex rel. Healy v. Pattison*, 241 Ill. 89, 89 N. E. 254.

pay over money due his client is a breach of implied contract, making him liable to an action in *assumpsit*,¹⁴ or, if he converts the money to his own use, to an action in *trover* or *case*.¹⁵ Or he may be compelled by a bill in equity to account for money collected.¹⁶

While an attorney may be charged with interest on money he fails to pay over to the client, the cases fix different periods for which it is to be computed, such as from the time of demand or wrongful conversion,¹⁷ from the time it was actually collected,¹⁸ or for the time he used it.¹⁹ And though the statute of limitations will operate for the benefit of an attorney, the authorities are not agreed as to when it will begin to run, some holding that it runs from the time of demand, others from the time of collection, while still others hold that it runs from the time the client has notice of collection from the attorney, or other means of knowledge on his part that the money has been collected.²⁰

In the Code of Ethics adopted by the American Bar Association in 1909, this phase of a lawyer's duty to his client is stated in article 11, as follows: "Money of the client, or other trust property coming into the possession of the lawyer, should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with his private property or be used by him." This brief but admirable statement, which is now in force in over one third of the states, would seem to afford a safe guide for the attorney in dealing with money belonging to his client, and strict adherence thereto will keep him free from the imputation of moral or

professional dishonesty in this regard, though it will not necessarily insure him against financial loss in being obliged to replace money lost through the fault of others. To insure himself against the latter he should take the precautions required of any trustee.

A reference to the article of the Code of Ethics quoted above will show that two distinct rules are there set forth to guide the conduct of the attorney. The first is to report promptly to the client the receipt of money. In addition to the ethical and professional duty involved, it is also the legal duty of an attorney to give notice of collection to his client immediately,²¹ or at least within a reasonable time.²²

In addition to the moral and legal duty of the attorney to promptly report the collection of money, a little reflection will show that the constant following of the practice will operate as a powerful restraint to the temptation so often felt by young lawyers who are necessarily living on the ragged edge of their resources most of the time, or of others who are living unnecessarily to the limit of their incomes, to use money coming into their hands to tide them over some temporary financial stringency which is no doubt frequently the beginning of a course of conduct which leads to serious results for the attorney. He is not as apt to "borrow" money in this way if he knows it is likely to be demanded at any time; and if the client is informed of the collection the temptation to misrepresent the fact because of some contingency arising thereafter is effectively removed.

The other duty set forth in the article quoted from the Code of Ethics is the attorney's obligation to refrain from commingling the client's money with his own, or from using it for his own purposes without the client's consent.

Aside from the fact that the temptation to use money belonging to the client is much greater if it is commingled with the attorney's private fund, either in his pocket, his safe, or his bank account, the attorney who does so is also subject

¹⁴ *Goodyear Metallic Rubber Co. v. Baker*, 81 Vt. 39, 69 Atl. 160, 15 A. & E. Ann. Cas. 1207, 17 L.R.A.(NS) 667.

¹⁵ *Jackson v. Moore*, 94 App. Div. 504, 87 N. Y. Supp. 1101; *Cotton v. Sharpstein*, 14 Wis. 226, 80 Am. Dec. 774; *Pratt v. Brewster*, 52 Conn. 65.

¹⁶ *Scott v. Wickliffe*, 1 B. Mon. 353; *Singer, N. & Co. v. Steele*, 24 Ill. App. 58; *Kelley v. Repetto*, 62 N. J. Eq. 246, 49 Atl. 429.

¹⁷ *Walpole v. Bishop*, 31 Ind. 156, *Dwight v. Simon*, 4 La. Ann. 490.

¹⁸ *Harkavy v. Zisman*, 96 N. Y. Supp. 214.

¹⁹ *Mansfield v. Wilkerson*, 26 Iowa, 482.

²⁰ 17 L.R.A.(N.S.) 667, note.

²¹ *Voss v. Bachop*, 5 Kan. 59.

²² *Spencer v. Smith* (Ind. App.) 87 N. E. 154.

to the danger of using it by mistake or oversight or, if on deposit, of its being attached by a personal creditor, so that he may have some difficulty in producing it upon demand.

Judge Simeon E. Baldwin seems to think that article 11 of the Code states the duty of an attorney in this respect too strictly, for he says: "The Code occasionally contains general expressions which in practice must be taken with certain implications or limitations."

"Thus, it is stated that money of the client coming into the possession of the lawyer should not be commingled with his private property or be used by him. This can hardly be meant to treat it as a breach of ethical obligation for an attorney of ample means, who receives a bank check in payment of a claim left with him for collection, to deposit it to his own credit in his own bank account, in order conveniently to deduct his own fees, remitting the balance promptly by his own check to the client. It would seem *in foro conscientiae* (whatever might be the lawyer's liability, should the bank fail) that the client's consent to such a transaction would be fairly implied, even if there had been no previous dealings between them of a like nature. So the young lawyer who receives a five dollar bank note to apply on a claim for a hundred dollars can hardly be regarded as in the wrong, if he puts it for safe keeping in his own pocket-book, provided it be with the intention of paying over the sum due at the first reasonable opportunity, although it might not, and naturally would not, be so paid by the delivery of that particular bill."²⁸

It does not seem to the writer that this criticism is well founded. While the provision of the Code in question does admittedly lay out a straight and narrow path for the attorney, it is not an impossible or even exceedingly difficult one to follow. And in view of the fact that many of the cases of professional misconduct in dealing with a client's money doubtless had their origin in the very fact that the money was commingled with the private funds of the attorney for as innocent purposes as

those mentioned, it would seem that the standard of conduct set up is not too high, but that, on the contrary, it is one which every attorney could well adopt without qualification for the protection of himself as well as his client, and should build into his every-day habit of professional conduct. The stress of circumstances through which the average lawyer passes furnishes enough temptation and will suggest plenty of plausible excuses for his departing from the ideal as set out, without its being weakened for him in the beginning by qualifications placed upon it by those who, because of their success and eminence, are naturally looked up to by him as standards for emulation. The following advice given in a little volume of danger signals²⁹ for the lawyer would seem to be a safer guide for the attorney in this respect. "You should not collect money for your clients, and retain it in your hands, or mingle it with your private funds. You may be perfectly honest in so doing, and intend to pay it over; but nevertheless, in a moment of weakness you may yield to the temptation to use it temporarily to relieve some real or fancied desire or necessity. Don't do this under any circumstances, for it is like driving a nail into your professional coffin. It may not be convenient to replace the sum when your client calls and asks you for a settlement, in which case you might be tempted to conceal from him the fact that you had received it, and to resort to subterfuges in order to put him off. If you do this you are paving the way to a reputation for rascality and meanness which you do not deserve, perhaps, and which will result in the client transferring his affections to another and more reliable attorney."

No reason is perceived why the attorney, whether he be the young attorney collecting small sums for various clients, or the attorney of ample means receiving large sums, cannot maintain a separate account in which to place all moneys belonging to clients which, for some reason, are not immediately remitted.

²⁹ You Should Not, by Samuel H. Waddell.

²⁸ 8 Columbia L. Rev. 543.

It seems to be quite a general practice for attorneys to open general accounts as attorneys, or in trust, entirely separate from their private funds, in which is placed all money belonging to the clients. While it is likely that the placing of the client's money in a general fund of this kind, without designation of the particular beneficiaries, would not relieve the attorney from personal liability as debtor in case the fund was lost through failure of the depository,²⁵ yet

such a course has the advantage of keeping the fund entirely separate, prevents its being used for personal purposes through accident or oversight, lessens the liability of the attorney to so use it intentionally, and insures him from the imputation of bad faith to which he is always liable if the funds of the client are commingled with his own.

This method is to be commended where it is not feasible to deposit the money in such a way that it will be clearly a trust fund, so that the attorney will be subject only to the liability of a bailee or trustee, instead of a debtor, in case of failure of the bank in which the deposit is made.

²⁵ *Naltner v. Dolan*, 108 Ind. 500, 58 Am. Rep. 61, 8 N. E. 289. See, however, *Pidgeon v. Williams*, 21 Gratt. 251, where the attorneys were held not liable as debtors, where they deposited the money in a separate account, with the name of each client entered opposite the sum deposited for him, and *Rogers v. Hopkins*, 70 Ga. 454, where the attorney was relieved from liability by placing the money due his client in an account in his own name in her bank, in which he had no personal deposits, and giving her notice thereof.

But whatever method may be adopted for keeping the money belonging to clients separate from his own, an attorney, by strictly adhering to the rule which the bar association has determined to be wise in such case, may be certain of avoiding the dangers to which he is subject in the handling of such funds.

Dr. Johnson's famous talk with Boswell on the ethics of advocacy contains this passage:

'What means may a lawyer legitimately use to get on?' Nice questions of casuistry arise. 'A gentleman,' says Boswell, 'told me that a countryman of his and mine, Wedderburn afterwards Lord Loughborough—who had arisen to eminence in the law, had when first making his way solicited him to get him employed in city causes. *Johnson*: 'Sir, it is wroug to stir up lawsuits; but when once it is certain that a lawsuit is to go on, there is nothing wrong in a lawyer's endeavoring that he shall have the benefit rather than another.' *Boswell*: 'You would not solicit employment, sir, if you were a lawyer?' *Johnson*: 'No, sir; but not because I should think it wrong, but because I should disdain it. However, I would not have a lawyer to be wanting to himself in using fair means. I would have him to inject a little hint now and then to prevent his being overlooked.'

The Lawyer's Compensation

BY WALTER A. SWAN, B. A.



HOW often is heard the remark that this or that litigation was dropped, or not even undertaken, because "the lawyers would get it all anyway," and how unpleasant a commentary it is upon the integrity of those in the profession. To enter the legal profession in these days is to undertake the burden, not only of proving one's honesty, but of disproving that one is a crook; for while the general rule presumes every man honest until he is proven otherwise, in the case of the lawyer popular opinion seems to presume that he is dishonest. While much of this is said of the lawyer in the spirit of jest, there goes with it the more or less serious opinion on the part of the public that lawyers generally will bear watching.

So far as the matter of the lawyer's charges is concerned, perhaps the public is justified in its view, for what it knows of such matters is a knowledge based upon the many instances of preposterous charges which, because of their very excessiveness, becomes a matter of general and unfavorable comment. From the case of the well-known New York lawyer who unsuccessfully sued for a fee of \$125,000 for services in the Thaw Case, to the country practitioner who, with scarcely the effort of turning his hand, settles a negligence action for a few hundred dollars and keeps one half or more, there range thousands of varied instances whose facts, if known, would write down as unscrupulous many prominent attorneys who now hold public favor.

From the occasional agitation of this question by bar associations, law journals, and the press in general, there appear to have resulted no very definite conclusions. All are agreed that a lawyer's compensation should be fair and reasonable, and unfortunately that is about as far as anyone can go, for

the definition of what is fair and reasonable must of necessity be left to the attorney's conscience, and not every lawyer is given to introspection; when it comes to making charges, lawyers sometimes fail to recognize their conscience, and on such matters one can hardly consult a stranger.

Perhaps no more serious question presents itself to the young lawyer after he secures his client, than the matter of the charge to make for his services, and there is varying sympathy for the young attorney whose stenographer sent out a bill for \$500 which her employer had conscientiously rendered for \$50, and which was promptly paid as very reasonable. As in many interesting stories, we are not told the sequel, and whether the client ever again sought out that particular attorney must be left to conjecture.

Opinions differ as to the basis of legal charges, but, for the young lawyer, at least, it would seem that he would receive reasonable compensation were he to charge only for the time actually given to his client's cause, regardless of the amount involved. The arguments which uphold the making of charges according to the amount in litigation, as well as to the learning, skill, and reputation of the attorney, are not available to the young man who is just opening his practice; in the first place because cases involving large interests are not likely to come to the young attorney, and because only after long experience does the worth of his services justify charges for the somewhat intangible value of skill and reputation.

So varied are the circumstances which control the matter of making charges, that it seems impracticable to do more than suggest some of the more important considerations which should guide the lawyer in fixing the amount of his compensation. In the first place, there is a personal side. One attorney may charge twice as much as another for the

same services, and yet be possessed of no greater ability, and so for most lawyers there is the danger of overestimating the value of his work, as well as the possibility of underestimating it. The amount of time and labor given to the client's business furnishes, to both attorney and client, the most satisfactory basis upon which to fix the charges, and the amount to be charged per day or hour may very reasonably be determined by both the importance of the case and the amount involved. While an attorney is never justified in slighting any matter which is placed in his hands, he cannot be expected to give the time and attention to a case involving a small amount which he would give to one involving thousands of dollars or invaluable business interests. As a matter of fact the less important case would not demand anything like the amount of time and care that the big case would take, and the lawyer's remuneration should be measured accordingly. To turn to another profession for an illustration, take the relative importance in the physician's eyes of a case of measles and the much-dreaded typhoid. Possibly the doctor's charge for visits would be the same in both cases, but the responsibility and the constant care and worry of the more serious case unquestionably entitle him to a proportionate compensation.

It is interesting to turn to the opinions of the courts on this question, and to find that they generally uphold not only the attorney's legal right to rate his charges according to the difficulty of the questions raised and the amount in controversy, but the propriety from an ethical view point of thus determining his compensation. As early as 1821 a South Carolina court commented upon this subject as follows: "The prominent facts, then, which arrest the attention in this case, and point with force to the conclusion which ought to be drawn from them, are, the great value of the property in contest; to which may be added the doubtful nature of the right to be tried. The legal discernment and skill required in the arrangement and management of the causes involving principles complicated in their nature and difficult of solution, the awakened anxiety of the

client embarking in such a contest, these considerations attach on the side of the employer. On the part of the attorney, the flattering and (from universal practice) I will add just, expectation that an ample remuneration would await his professional exertions, the laudable anxiety not to disappoint the fond hopes and high expectations entertained by the client, public opinion, a self-approving consciousness of merit, these, with ten thousand other honorable incentives which present themselves to liberal and correct minds, and which lead to infinite labor and exertion on the part of the counsel retained, certainly entitle him to a reward which ordinary causes do not call for or allow."¹

The supreme court of Kansas thus expresses itself as to the manner of determining the value of legal services: "It is claimed that the premises on which the witness based his estimate of the value of the services rendered are erroneous,—that he had no right to consider 'the amount in controversy and the legal questions involved and the general importance of the case,' in making his judgment of the value of the services. But we think these were all proper and important elements in determining the value of the services. We know that an attorney is bound to fidelity to his client as much when the amount is \$1 as when it is a million. His obligation is not changed. But it is in the knowledge of every professional man that when great interests are confided to his care he is expected to use the utmost diligence in the preparation of the case. He is not expected to nor does he limit his services by the rule of ordinary care and skill that governs him in an ordinary case."²

In a Michigan case the contention that the value of legal services was not dependent upon the value of the property in litigation called forth this comment: "It is very evident that the responsibility, the care, anxiety, and mental labor is much greater in a case where the amount in controversy is large than where it is insignificant, although, perhaps, the same

¹ *Duncan v. Breithaupt*, 1 M'Cord, L. 149.

² *Ottawa University v. Parkinson*, 14 Kan. 159.

questions might be raised in each case, or the more difficult questions arise in the case where the amount was of but slight consequence. Nor is this responsibility, care, and mental labor dependent alone upon the number of hours or days which may be given to the preparation and trial or argument of the case. This responsibility and mental anxiety is not so imaginative and shadowy that it should not be considered in arriving at a proper compensation to be allowed in fixing the value of the services rendered."³

In an action by an attorney to recover for professional services, a presiding justice of the New York supreme court said in the course of his opinion: "It requires no greater labor to draw a complaint or answer, or to render any other specific service in a case in which the amount involved is \$1,000,000, than in one in which it is \$100. And yet, every lawyer knows that the labor bestowed upon a case is, as a general rule, in proportion to the magnitude of the interest involved. While the labor in drawing a pleading may be no more when the amount involved is large than when it is small, yet the labor in the examination of authorities and documents preliminary to drawing it, and the care bestowed upon the pleading itself, would be much greater in one case than in the other. This extra care and labor must be compensated, and it may be measured with some degree of accuracy by the amount involved in the suit."⁴

The relation of reputation to compensation is something of which little can be said. When clients complain because they have to pay high for an attorney's services, because of his reputation, they lose sight of the fact that, in the case of great lawyers, reputation is generally an indicator of great ability. Counsel fees mount upward as a lawyer's reputation grows, and instances are not infrequent

where fees in a single case amount to many thousands of dollars. The great corporate and other business interests have litigation which demands the services of men of ability, and the eminent lawyers who are thus engaged have such reputations that the amount paid for their services is often fabulous. The value of the lawyer's reputation is best told by the story of the attorney who was engaged in the trial of what he knew was a losing cause. In desperation he telegraphed to a very celebrated lawyer that he would pay him \$1,000 for an hour of his time on the following morning. The trial progressed the next day until within an hour of the noon adjournment, when the great lawyer who had been summoned walked quietly into the court room and took his seat among the spectators. The opposing attorney observed the exchange of glances as the noted man entered, and, before the close of the recess, which shortly followed, proposed a settlement of the case.

If there is one rule for the lawyer to follow in determining the amount of his charges, it is that which forbids him to take advantage of his client. A wealthy client will stand some overcharging; a corporation will send its check just as promptly if a few hundred dollars are added to its annual account; a friendless widow who has but a few years to live will make little complaint when her bill is doubled; an ignorant foreigner will probably never know that in his suit for damages against a mining company the recovery went mostly to the lawyer. Such instances as these are not particularly common, but now and then the facts of such a case become public, to the disgrace of the entire profession. When every lawyer is absolutely fair with those for whom he does business, and when he makes no charge which he would not care to explain to the public, a step of importance will have been taken toward the removal of the prejudice which now stands against the legal profession.

³ Eggleston v. Boardman, 37 Mich. 14.

⁴ Garfield v. Kirk, 65 Barb. 464.

Cross-Examination of the Perjured Witness

BY FRANCIS L. WELLMAN

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IN the preceding chapters it was attempted to offer a few suggestions, gathered from experience, for the proper handling of an honest witness who, through ignorance or partisanship, and more or less unintentionally, had testified to a mistaken state of facts injurious to our side of the litigation. In the present chapter it is proposed to discuss the far more difficult task of exposing, by the arts of cross-examination, the intentional fraud,—the perjured witness. Here it is that the greatest ingenuity of the trial lawyer is called into play; here rules help but little as compared with years of actual experience. What can be conceived more difficult in advocacy than the task of proving a witness, whom you may neither have seen nor heard of before he gives his testimony against you, to be a wilful perjurer, as it were out of his own mouth?

It seldom happens that a witness's entire testimony is false from beginning to end. Perhaps the greater part of it is true, and only the crucial part—the point, however, on which the whole case may turn—is wilfully false. If, at the end of his direct testimony, we conclude that the witness we have to cross-examine—to continue the imaginary trial we were conducting in the previous chapter—comes under this class, what means are we to employ to expose him to the jury?

Let us first be certain we are right in our estimate of him,—that he intends perjury. Embarrassment is one of the emblems of perjury, but by no means always so. The novelty and difficulty of the situation—being called upon to tes-

tify before a room full of people, with lawyers on all sides ready to ridicule or abuse—often occasions embarrassment in witnesses of the highest integrity. Then, again, some people are constitutionally nervous, and could be nothing else when testifying in open court. Let us be sure our witness is not of this type before we subject him to the particular form of torture we have in store for the perjurer.

Witnesses of a low grade of intelligence, when they testify falsely, usually display it in various ways,—in the voice, in a certain vacant expression of the eyes, in a nervous twisting about in the witness chair, in an apparent effort to recall to mind the exact wording of their story, and especially in the use of language not suited to their station in life. On the other hand, there is something about the manner of an honest, but ignorant, witness that makes it at once manifest to an experienced lawyer that he is narrating only the things that he has actually seen and heard. The expression of the face changes with the narrative as he recalls the scene to his mind; he looks the examiner full in the face; his eye brightens as he recalls to mind the various incidents; he uses gestures natural to a man in his station of life, and suits them to the part of the story he is narrating, and he tells his tale in his own accustomed language.

If, however, the manner of the witness and the wording of his testimony bear all the earmarks of fabrication, it is often useful, as your first question, to ask him to repeat his story. Usually he will repeat it in almost identically the same words as before, showing he has learned it by heart. Of course it is possible, though not probable, that he has done this and still is telling the truth.

Try him by taking him to the middle of his story, and from there jump him quickly to the beginning and then to the end of it. If he is speaking by rote, rather than from recollection, he will be sure to succumb to this method. He has no facts with which to associate the wording of his story; he can only call it to mind as a whole, and not in detachments. Draw his attention to other facts entirely disassociated with the main story as told by himself. He will be entirely unprepared for these new inquiries, and will draw upon his imagination for answers. Distract his thoughts again to some new part of his main story, and then suddenly, when his mind is upon another subject, return to those considerations to which you had first called his attention, and ask him the same questions a second time. He will again fall back upon his imagination and very likely will give a different answer from the first, and you have him in the net. He cannot invent answers as fast as you can invent questions, and at the same time remember his previous inventions correctly; he will not keep his answers all consistent with one another. He will soon become confused and, from that time on, will be at your mercy. Let him go as soon as you have made it apparent that he is not mistaken, but lying.

An amusing account is given in the *Green Bag* for November, 1891, of one of Jeremiah Mason's cross-examinations of such a witness. "The witness had previously testified to having heard Mason's client make a certain statement, and it was upon the evidence of that statement that the adversary's case was based. Mr. Mason led the witness round to his statement, and again it was repeated *verbatim*. Then, without warning, he walked to the stand, and pointing straight at the witness said, in his high, impassioned voice, 'Let's see that paper you've got in your waistcoat pocket!' Taken completely by surprise, the witness mechanically drew a paper from the pocket indicated, and handed it to Mr.

Mason. The lawyer slowly read the exact words of the witness in regard to the statement, and called attention to the fact that they were in the handwriting of the lawyer on the other side.

"'Mr. Mason, how under the sun did you know that paper was there?' asked a brother lawyer. 'Well,' replied Mr. Mason, 'I thought he gave that part of his testimony just as if he had heard it, and I noticed every time he repeated it he put his hand to his waistcoat pocket, and then let it fall again when he got through.'"

Daniel Webster considered Mason the greatest lawyer that ever practised at the New England bar. He said of him, "I would rather, after my own experience, meet all the lawyers I have ever known combined in a case, than to meet him alone and single-handed." Mason was always reputed to have possessed to a marked degree "the instinct for the weak point" in the witness he was cross-examining.

If perjured testimony in our courts were confined to the ignorant classes, the work of cross-examining them would be a comparatively simple matter, but unfortunately for the cause of truth and justice this is far from the case. Perjury is decidedly on the increase, and at the present time scarcely a trial is conducted in which it does not appear in a more or less flagrant form. Nothing in the trial of a cause is so difficult as to expose the perjury of a witness whose intelligence enables him to hide his lack of scruple. There are various methods of attempting it, but no uniform rule can be laid down as to the proper manner to be displayed toward such a witness. It all depends upon the individual character you have to unmask. In a large majority of cases the chance of success will be greatly increased by not allowing the witness to see that you suspect him, before you have led him to commit himself as to various matters with which you have reason to believe you can confront him later on.

To be Continued.

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Judges of England” said: “My noble and learned friend Lord Brougham said that an advocate should be fearless in carrying out the interests of his client; but I couple that with this qualification and this restriction—that the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to strive to accomplish the interest of his clients *per fas*, but not *per nefas*: It is his duty, to the utmost of his power, to seek to reconcile the interests he is bound to maintain, and the duty it is incumbent upon him to discharge, with the eternal and immutable interests of truth and justice.”

“It is a popular but gross mistake,” says Chief Justice Gibson,¹⁴ “to suppose that a lawyer owes no fidelity to anyone except his client; and that the latter is the keeper of his professional conscience. He is expressly bound by his official oath to behave himself in his office of attorney with all due fidelity to the court as well as the client; and he violates it when he consciously presses for an unjust judgment. . . . The high and honorable office of a counsel would be degraded to that of a mercenary were he compelled to do the biddings of his client against the dictates of his conscience.”

A well known writer on legal topics has said: “A determination . . . on the part of an advocate to devote himself at all hazards to the rescue of his client at the expense of the law, and, it may be, of truth, can have no vindication from the assumption that it is required by the principle of fidelity. It is rather subversive of that principle rightly understood. . . . The lawyer’s duty to his client is to be honest, faithful, skilful, and diligent, and he owes and can justly give him nothing more.”¹⁵

Perhaps no clearer statement of an advocate’s duty can be found than that given in an address by W. R. Curran¹⁶ on the Data of Professional Ethics, in

which he said: “It is not the duty of counsel to clear guilty persons; but it is their duty to see that no one presumed to be innocent shall be robbed of the cloak of that presumption by a judgment of guilty except by due process of law, and to secure for that person on his trial the benefit of every safeguard that the law affords. Any less service than this on behalf of counsel makes him recreant to his duty; more than this, is beyond the scope of his duty. Within the narrow boundaries of this field must the advocate’s battles be fought and the victory won or lost, and he is a good soldier who swings an unbroken blade above a clean shield.”

But all this does not mean that a belief in his client’s guilt should render the advocate lukewarm in his defense. As an eminent advocate has eloquently said: “It is the privilege, it is the obligation, of those who have to defend a client on a trial for his life, to exert every force, and to call forth every resource, that zeal, and genius, and sagacity can suggest. It is an indulgence in favor of life—it has the sanction of usage—it has the permission of humanity; and the man who should linger one single step behind the most advanced limit of that privilege and should fail to exercise every talent that heaven had given him, in that defense, would be guilty of a mean desertion of his duty, and an abandonment of his client.”¹⁷

However much of a handicap on the zeal of an advocate, the deepening of a mere belief in his client’s guilt into a moral conviction, even where the effect of the client’s own admission, does not diminish his obligation. Here the interest of society which requires the punishment of the guilty is merged in the larger interest which demands that no one shall be punished whose guilt is not established by competent and sufficient evidence, before the proper tribunal, and

(Ill.) Bar Association on February 10, 1908. Published in Illinois Law Review for May, 1908.

¹⁷ John P. Curran, Trial of Sir Henry Hayes, for abduction of Miss Pike, Cork, April 16, 1801.

¹⁴ Rush v. Cavanaugh, 2 Pa. St. 187.

¹⁵ Dos Passos, The American Lawyer.

¹⁶ Delivered before the Tazewell County

under a duly formulated charge. As Blackstone says: "Let the circumstances against the prisoner be ever so atrocious, it is still the duty of the advocate to see that his client is convicted according to those rules and forms which the wisdom of the legislature has established as the best protection and security of the subject."

A celebrated English advocate, Charles Phillips, was, in 1840, employed, together with a Mr. Clarkson, in the defense of Courvoisier, a Swiss valet, who was convicted and executed for the murder of his master. The evidence against the prisoner, who stoutly declared himself to be innocent, was wholly circumstantial; and his counsel were proceeding to conduct his defense upon the theory that he was the victim of an attempt to divert suspicion from the true perpetrator of the crime. On the morning of the second day of the trial, Courvoisier, staggered by the production of an unexpected witness, sent for his counsel and confessed to them that he was in fact the murderer. Phillips, in the statement published in reply to an attack upon his conduct upon this occasion, says: "When I could speak, which was not immediately, I said: 'Of course, then, you are going to plead guilty?' 'No Sir,' was the reply; 'I expect you to defend me to the utmost.' We returned to our seats. My position at this moment was, I believe, without parallel in the annals of the profession. I at once came to the resolution of abandoning the case, and so I told my colleague. He strongly and urgently remonstrated against it, but in vain. At last he suggested our obtaining the opinion of the learned judge who was not trying the cause upon what he considered to be the professional etiquette under circumstances so embarrassing. In this I very willingly acquiesced. We obtained an interview, when Mr. Baron Parke requested to know distinctly whether the prisoner insisted on my defending him; and, on hearing that he did, said I was bound to do so, and to use all fair arguments arising on the evidence. I therefore retained the brief; and I contend for it, that every argument I used was a fair commentary on the evidence, though undoubtedly as strong as I could make

them. I believe there is no difference of opinion now in the profession that this course was right. It was not till after eight hours of my public exertion before the jury that the prisoner confessed; and to have abandoned him then would have been virtually surrendering him to death."

It has hereinbefore been suggested that a conviction or actual knowledge of his client's guilt may impose a severe handicap upon the zeal and earnestness of a conscientious advocate; and where he feels that he must inevitably betray such conviction, to the prejudice of the cause of his client, his duty to the latter will require him, wherever such action may be taken without too evident an abandonment of the cause, to turn over to another the active conduct of the case. It is related of Abraham Lincoln that sometimes after entering upon a criminal case the conviction that his client was guilty would affect him with a sort of panic. On one occasion he turned suddenly to his associate and said: "Swett, the man is guilty, you defend him, I can't," and so gave up his share of a large fee. At another time when he was engaged with Judge S. C. Parks in defending a man accused of larceny, he said "If you can say anything for the man, do it, I can't; if I attempt to the jury will see I think he is guilty and convict him."¹⁸

The application of the general principles with which the present discussion has up to this point been concerned, to the details of professional conduct, must give rise to many nice questions of casuistry upon which the most honorable men may honestly differ. The limits of this article permit only brief notice of a few of the more salient.

Thus, no matter how strong his conviction of his client's guilt, it is plainly the duty of counsel to demur to an indictment of doubtful sufficiency; and to fail to do so would be to betray the trust confided to him. He is likewise bound to take advantage of every question of law arising upon or after the trial. The biographer of William Green says with reference to his employment to make ap-

¹⁸ From a sketch of Abraham Lincoln by William Elleroy Curtis.

plication for a writ of error in behalf of John Brown after the latter's conviction: "With no hesitating blade Mr. Green cut the Gordian knot of an ethical question, which has not yet ceased to disturb the hesitating consciences of less profoundly convicted practitioners of the law,—the question of whether the lawyer, who is fully assured of the guilt of his client, should yet exhaust all the weapons in the armory of defense in his behalf. No doubt entered Mr. Green's mind for a moment as to where his duty lay; and with a moral courage of the loftiest type, he permitted no thought of how the inflamed public opinion of the people among whom he lived might regard his espousal of the cause of the convicted leader. His duty lay clear and shining before him; and he performed it with as much zeal as if he had believed him innocent, and doubtless with as much ability as he had ever shown in any cause of whose entire righteousness he was convinced."¹⁹

In dealing with the facts, it is the duty of the advocate to guard with unremitting vigilance against the admission of any evidence which does not measure up to the standard of those legal rules which, "made to exclude all but the best kinds of proof, are in their very nature nothing else than merely artificial safeguards against the miscarriage of justice."

In seeking to rebut the evidence against the defendant he may bring out or establish such facts as may tend to explain such evidence upon some hypothesis other than that of the guilt of his client, and may attack the credibility of any witness whom he honestly believes to be unworthy of credence. But the ethical obligations which bound his duty in this respect, and which are indeed no other than should govern his defense of the innocent, require that he shall not seek to cast suspicion on those whom he knows to be guiltless, nor damage the character of witnesses whom he knows to be telling the truth.

He is bound to take advantage of any insufficiency of evidence; and the obligation which is upon him to do nothing in-

consistent with his representative capacity precludes him from supplying any deficiency. With reference to this point Dr. Rogers says:⁷ "It is always the duty of the prosecution, who have undertaken the burden of proof, to make out their case; and to suggest that it is the duty of a defending counsel to help them to do so in the interests of abstract justice, is not only wholly to misconceive the function of an advocate, but to advance a theory that is not likely to find support outside the jurisdiction of the courts of Utopia."

It seems also, although it may be admitted to be a matter of some nicety, that an advocate is warranted in setting up the defense of justification or irresponsibility, although such a plea may not appear to him to be well founded. It is a duty incumbent upon him in his representative capacity to say whatever can be said in extenuation, and to leave the responsibility for the acceptance or rejection of such plea with the jury, where it belongs.

But it is in submitting the case to the jury that advocacy is most likely to exceed its proper bounds. Here indeed, in the phrase of the Persian poet, a hair divides the false and true. An advocate may, in the words of Baron Parke hereinbefore quoted, "use all fair arguments arising on the evidence;" That is, he may expose weak and enlarge upon favorable evidence, and may advance any hypothesis which will tend to explain the case made against his client, always keeping in mind the qualification above noted that he is not to cast suspicion upon anyone known by him to be in fact innocent. On the other hand, he may neither distort the facts, misrepresent the law, nor indulge in fallacious reasoning.²⁰

²⁰ The advance in ethical conceptions in this regard is marked, and may be measured by contrasting the views expressed by lawyers of modern times with those of ancient writers.

Thus, Cicero makes the distinction that it is the duty of the judge to pursue the truth, but it is permitted to an advocate to urge what has only the semblance of it. He says he would not have ventured himself to have advanced this (especially when he was writing upon philosophy) if it had not also been the opinion of the gravest

Without going so far as to say it is not an uncommon, it may safely be said that it is not an unknown practice in our courts for an advocate to assert his

belief in the innocence of his client, or in justice of his cause. Notwithstanding that among the offenders in this respect may be found such eminent names as

of the Stoics, Panaetius.—Cicero, *de Off.* lib. 2, c. 14.

Baron Puffendorf in his *Law of Nature*, a book the perusal of which was once accounted a necessary part of the education of a gentleman, in a chapter entitled "Of Speech, and the Obligation which attends it," says: "But in Criminal Cases, where the Dispute regards only the Punishment, we judge it ought to be farther consider'd, whether the Council be assign'd by the Publick Authority, or by the particular Appointment of the Prisoner. If by the former, it doth not seem allowable for them to make use of feign'd Arguments and false Colours; since the Design of the Court in deputing them, was only that they might wipe off any Calumny thrown upon the Prisoner, and take care that he suffer no Injustice. Which End is sufficiently answer'd by a bare Refutation of the Proofs offer'd by the Accuser. But he whom the Prisoner particularly chooseth and retains to plead in his behalf, since he only acts as his Client's Interpreter, may, in our Judgment, lawfully use the same Method of Defence which the Prisoner might have used, had he answer'd for himself. "He is under a very great mistake," says Tully, "that fancies he hath got our real Opinion and Authority for all that he meets with in our Judiciary Orations. Whatever we delivered on those Subjects is to be ascribed to the Causes, and to the Times, and not to the Man, or to the Pleader." And in his Second Book of Offices he maintains, sometimes to defend a guilty Person, is not contrary to any Duty of Religion. Nor is Justice in any great danger of suffering by this Permission: For, since the Judge is supposed fully to understand the Law, the Advocate by producing false Laws or false Authorities, is not likely to prevail to any purpose: and he is never credit'd upon his bare Assertion, but is obliged to produce sufficient proof. And therefore, if a guilty Person do by this means sometimes escape unpunished, the Fault is not to be charged on the Advocate, or on the Prisoner, but on the Judge, who had not the wisdom to distinguish between Right and Wrong." (Kennet's Translation), bk. 4, chap. 1, par. 21.

A different conception of an advocate's duty is that entertained by David Hoffman, a member of the Baltimore Bar in the first half of the nineteenth century, renowned for his professional integrity, who among a set of resolutions framed by him for adoption by his students on admission to the bar included the following: "When employed to defend those charged with crimes of the deepest dye, and the evidence against them, whether legal or moral, be such as to leave

no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavors to arrest or to impede the course of justice, by special resorts to ingenuity, to the artifices of eloquence, to appeals to the morbid and fleeting sympathies of weak juries, or of temporizing courts, to my own personal weight of character—nor finally, to any of the overweening influences I may possess from popular manners, eminent talents, exalted learning, etc. Persons of atrocious character, who have violated the laws of God and man, are entitled to no such special exertions from any member of our pure and honorable profession; and, indeed, to no intervention beyond securing to them a fair and dispassionate investigation of the facts of their cause, and the due application of the law. All that goes beyond this, either in manner or substance, is unprofessional, and proceeds, either from a mistaken view of the relation of client and counsel, or from some unworthy and selfish motive which sets a higher value on professional display and success than on truth and justice, and the substantial interests of the community. Such an inordinate ambition I shall ever regard as a most dangerous perversion of talents, and a shameful abuse of an exalted station. The parricide, the gratuitous murderer, or other perpetrator of like revolting crimes, has surely no claim on the commanding talents of a profession whose object and pride should be the suppression of all vice by the vindication and enforcement of the laws. Those, therefore, who wrest their proud knowledge from its legitimate purposes to pollute the streams of justice and to screen such foul offenders from merited penalties, should be regarded by all (and certainly shall by me) as ministers at a holy altar full of high pretension and apparent sanctity but inwardly base, unworthy, and hypocritical—dangerous in the precise ratio of their commanding talents and exalted learning."

Luther Martin's conception of the duty which a lawyer owes to his client, disclosed in his argument on the impeachment of Judge Chase was, says Judge A. M. Gould, "that when counsel have done all that can be done to insure a fair trial for a client, if according to the clear, undoubted evidence, the latter is guilty, it is the duty of counsel to submit his client's case to the decision of the jury without any attempt to mislead them, and this whether counsel is appointed by the court or retained by the criminal." Mr. Martin said: "The duty of a lawyer is, most certainly, in every case to exert himself in procuring justice to be done to his client, but not to support him in injustice."

those of Brougham, Campbell, and Erskine;⁸¹ a sounder view condemns this practice as in any case transcending the proper bounds of advocacy, and, where contrary to the advocate's personal beliefs, as violative of ethical obligations.⁸² It is not his business to represent his client as innocent—it is sufficient that the law so presumes him. The advocate's personal opinion forms no part of his client's case; and if he makes it such he speaks for himself, and not in his representative capacity. The impropriety of the assertion of a belief in the justice of his client's cause where such belief is honestly entertained arises from the fact that a contrary inference would inevitably be drawn wherever such belief is not expressed; while if he asserts a belief contrary to his personal convictions he justly incurs the reproach of prostituting his own character for the sake of his fee.

It is not necessary to consider in connection with this subject practices which savor of fraud and chicanery, such as suppression of evidence and connivance at perjury. Such practices cannot be sanctioned in the most honorable cause—much less in an unjust one. The moral character of the advocate is not merged in that of his client; and the arms which he wields are, in the phrase of Sir Alexander Cockburn, to be the arms of the warrior and not of the assassin. The sentiment of the bar upon this phase of the question needs no vindication. The following language, taken from the code of ethics adopted by the Alabama Bar Association, has its counterpart in every

other code indorsed by the profession: "It is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy the man's accountability to the Creator, or loosen the duty of obedience to law and the obligation to his neighbor; and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery, for the client's sake." "A lawyer who invents or manufactures defenses for prisoners," says the code of ethics of the San Francisco Bar Association, "or who procures their acquittal by the practice of any manner of deceit, cajolery, wilful distortion or misrepresentation of facts, or any other means not within the spirit as well as the letter of the law, is to be reckoned as an enemy to society and more dangerous than the criminal himself; while successes at the bar won by such methods can never be the basis of desirable professional reputations, but, on the contrary, are badges of infamy."

The whole matter may be summarized by saying that the ethical obligation of an advocate in an unjust cause is neither more nor less than rests upon him in the advocacy of any cause. "There is," said Sir James Hannen,⁸³ "an honorable way of defending the worst of cases." In so doing the advocate should remember the advice of Lord Eldon, that in cases of doubt and difficulty, *Quod dubitas ne feceris*, is a good rule of conduct.⁸⁴ The lawyer's greatest danger arises from his bias in favor of the cause which he represents. He should guard against excess of zeal, and in the glow of partisanship should not forget that he owes other duties than that to his client. He must make no distinction between his personal and his professional conscience; and in following its dictates should take care not to incur the charge, which an eminent man of letters is reported to have made against a famous English statesman, that the conscience which should have been his monitor had become his accomplice.

⁸¹ "If an advocate entertains sentiments injurious to the defense he is engaged in, he is not only justified but bound in duty, to conceal them; so, on the other hand, if his own genuine sentiments, or anything connected with his character or situation, can add strength to his professional assistance, he is bound to throw them into the scale."—Lord Erskine, in defense of Thomas Paine, tried for libel, Court of King's Bench, Guildhall, Dec. 18, 1792.

⁸² This practice is condemned by Quintilian, although upon the grounds of expediency: "They likewise are arrogant who are peremptory in asserting the goodness of their cause, and that if it were not such they would not have undertaken it. The judges, indeed, cannot bear to hear one presume to exercise their function." Quint. Inst. bk. XI, chap. 1, § 3.

⁸³ In *Smith v. Smith* (1882) L. R. 7 Prob. Div. 89.

⁸⁴ In *Cholmondeley v. Clinton*, 19 Ves. Jr. 267.

The Editor's Comments

What the Press is saying about law and lawyers.



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Edited by Asa W. Russell.

Discouragement of Litigation.

¶ It has long been recognized as the duty of every lawyer to discourage litigation. Years ago Abraham Lincoln wrote: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser,—in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the

register of deeds in search of defects in titles, whereon to stir up strife and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it."

This subject frequently receives timely comment in the public press.

The standard of ethics of the profession of the law, says the Pueblo Journal, is becoming higher. For that matter it always was high with the best practitioners, and these have consistently discouraged litigation. Conscientious, capable lawyers understand that their function is to expound the law, not necessarily in the courts, and indeed preferably elsewhere than in the courts, to keep their clients out of trouble; by good, sound, clear advice to render the highest possible service to those who seek their aid; to prevent litigation wherever possible, and thus to assure the greatest material gain and the minimum of litigiousness and quarreling.

But the fact remains that there are some lawyers who, either because of lack of ability or paucity of learning or absence of scruple or aversion to labor, will not familiarize themselves with the law as they should, or, knowing it, wilfully disregard it in order to promote litigation.

Again, there is that class of lawyers who are so exact, whose minds are so obsessed by the importance of trivialities and technicalities, that they lose sight of large matters at issue, and regard only the quibbles and quirks with which the law books abound.

These are things that deserve attention at the hands of reputable lawyers. The law is one of the noblest of callings, and its functions are of tremendous moment. Lawyers are all officers of the court, by virtue of their profession, and discredit attaching to them and to the profession is reflected in the popular mind by discredit of the courts themselves.

Young Lawyers in Politics.

“**S**HOULD young lawyers keep out of politics?” asks the *Houston Chronicle*.

Speaking for the faculty at the close of the school year at Ann Arbor, Professor D. M. Thompson advised the senior class law students to study the topics of the times and contemporary public questions, but to keep out of politics.

He proceeded to give his reasons therefor, which at first reading appear to have much cogency, but upon further consideration are seen to be, perhaps, not quite so sound, as follows: “I should like to urge upon you,” he said, “to avoid politics. I don’t mean that you are not to be interested in the great questions upon whose solution will depend the future of the nation, but I would ask you not to ally yourself with any party, either Democratic, Republican, Socialist, or Prohibition. Rather stand aloof, studying each great political question that is presented to you as it comes up year after year. Study it well, and vote as your good judgment and your conscience tell you.

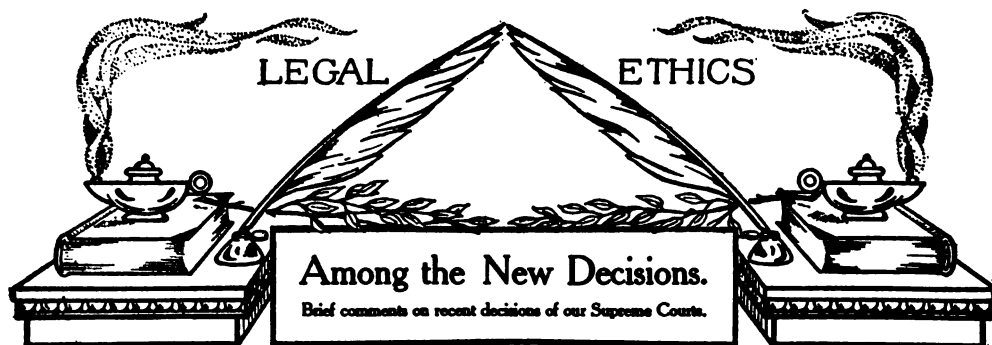
“Most lawyers cannot afford to go into politics; the offices pay so little and the cost of a campaign is so great. Make up your mind not to go actively into politics till you have practised law for twenty-five years. Then, if you have secured a competency, have won the regard and respect of your community through straightforwardness in that

quarter of a century, go in and taste the sweets of political life, unhampered by the necessity of a hand-to-mouth existence,—a continuous fight with poverty. The most fatal mistake a young man can make is the neglect of his profession for the laurels of politics.”

Commenting on this, the *Lincoln (Nebraska) Star* declares that there is nothing in this which might not be said to a class of farmers, and that it is quite unpatriotic to advise our young men to keep out of politics. “Suppose we said it to the young man learning any useful calling,” the *Nebraska* paper argues, “What a fine lot of old fossils or uneducated young cubs we would have running our public affairs!”

Certainly it is better for all our educated young men to go into politics and try and govern the country for its good. The young lawyer is eminently fitted by training and ability to render valuable public service. In doing so, he need not neglect his profession. Campaigns are of short duration, and important political contests do not occur every year. But when vital issues are at stake the young lawyer ought not to shirk his duty. Political service is as essential to the state as military service. The demands of good citizenship are not always satisfied by merely casting a ballot. It is a false and selfish view of life, which would lead a man to forego participation in political affairs because it would prevent an unremitting application to his business.





Action—service by publication—when commenced.—There is apparently but little authority upon the question as to when an action based on service by publication is to be deemed to be commenced for the purpose of the statute of limitations. The recent Iowa case of *Slater v. Roche*, 126 N. W. 925, 28 L.R.A.(N.S.) 702, holds that in case process is served by publication, the action is not commenced, for the purpose of determining whether or not it is within the time allowed by the statute of limitations, until the publication is completed.

As appears by the note accompanying the L.R.A. report of the case, no decision has been found which holds an action to be commenced for this purpose before the filing of the petition and affidavit required in cases of service by publication.

Attorney—purchase from client—burden of proof.—It has been held in a few cases that an attorney is under an absolute disability to purchase the subject-matter of his retainer or of prospective or pending litigation from his client. But a contrary rule is sustained by the weight of authority.

The case of *Hamilton v. Allen*, 86 Nev. 401, 125 N. W. 610, holds that where attorneys purchase from their clients and resell the subject-matter of their employment, the burden is on them, when sued by their clients for resulting profits, to prove the original purchase price was fair. This decision is accompanied in 28 L.R.A.(N.S.) 723, by the recent cases on the right of an attorney to purchase the subject-matter of litigation from his client, the earlier decisions on the question having been treated in a note in 23 L.R.A.(N.S.) 679.

Bills and notes—blank indorsement—parol explanation.—An exception to the parol evidence rule is recognized where it is sought to introduce parol evidence in order to show, as between indorser and indorsee, that the indorsement was made merely to transfer the title to the owner of the instrument. This exception is based on the well-recognized exception that such evidence may be given to show want or failure of consideration.

Thus it is held in the Arkansas case of *First Nat. Bank v. Reinman*, 125 S. W. 443, annotated in 28 L.R.A.(N.S.) 530, that as between a bank holding a note and its immediate indorser in blank, parol evidence is admissible to show that he indorsed as its agent to transfer title to the note, including the fact that he sold certain property to the bank to be sold to the maker, and that the note was taken in his name and indorsed to the bank merely for its accommodation in the transaction.

Broker—secret commission—duty to account.—That a real-estate broker who, to secure the terms on which he is authorized to sell, effects an intermediate sale to one who for a bonus is willing to comply with the owner's terms and hold the property subject to such terms as the true purchaser can meet, thereby securing a commission of which his principal is ignorant, is bound to account to him for it, is held in *Easterly v. Mills*, 54 Wash. 356, 103 Pac. 475, annotated in 28 L.R.A.(N.S.) 952. This decision is in harmony with the earlier cases on the question.

Carrier—receipt prepared by shipper—binding effect.—Where a shipper tenders to a common carrier a form of receipt for

goods to be carried, which contains a limitation of the carrier's liability, and the carrier assents to its terms, it is held in the New Jersey case of *Perrin v. United States Express Co.* 74 Atl. 462, that the shipper is bound thereby, notwithstanding the receipt may be in a blank form, furnished by the carrier.

This holding is in conformity with the earlier authorities, as appears by the note appended to this case in 28 L.R.A.(N.S.) 645.

Commerce—between intrastate points—passage into other state—effect.—It may now be laid down that transportation between points in the same state, over a route part of which is in another state or territory, constitutes interstate commerce. Such is the last utterance of the Supreme Court of the United States upon the subject.

In conformity with this rule it is held in the Kansas case of *Missouri, K. & T. R. Co. v. Leibengood*, 109 Pac. 988, annotated in 28 L.R.A.(N.S.) 985, that an act requiring corporations and others operating railroads as common carriers to transport live stock within the state at a speed of not less than 15 miles per hour, unless prevented by some unavoidable cause (*Laws* 1907, chap. 276), does not apply to nor affect interstate commerce, and a shipment of live stock between points in the state, which passes for a short distance over the territory of another state, is interstate commerce, and noncompliance with the requirements of the statute in such a shipment affords no grounds for recovery against the carrier.

Constitutional law—ex post facto laws—increasing penalty of bond.—The question as to whether an act increasing the amount of a penal bond required in a criminal case comes within the constitutional prohibition against the enactment of *ex post facto* laws was considered, apparently for the first time, in the Nebraska case of *State v. McCoy*, 127 N. W. 137, 28 L.R.A.(N.S.) 583, holding that an amendatory act increasing the penalty of a bond essential to the suspension of sentence in a prosecution against a husband for abandonment is *ex post facto* as to prior offenses.

Contract—medical services—validity.—The question of the legality of an agreement between a physician and his patient by which the former agrees to render his services to the latter for life seems to have been but twice before the courts. The latest case on the subject is *Re McVicker*, 245 Ill. 180, 91 N. E. 1041, 28 L.R.A.(N.S.) 1112, which holds that a contract to furnish one medical attendance during life for a lump sum payable at his death is not void as against public policy, either because furnishing an inducement to threaten his life or as a wagering contract.

Damages—ejectment from car—counsel fees.—It seems to be settled that in actions for damages for tort where punitive or exemplary damages are recoverable, the jury may include a reasonable counsel fee as part of the damages. The question whether counsel fees may also be recovered when the tort is of such a nature that only compensatory damages can be recovered was raised in *United Power Co. v. Matheny*, 81 Ohio St. 204, 90 N. E. 154, which holds that in an action to recover damages for unlawfully and forcibly ejecting the plaintiff from a street car it was error for the court to charge the jury that, if they found that the ejectment of the plaintiff was not justified, but was without malice or insult, they could award compensatory damages only, and as part thereof they might allow plaintiff a reasonable sum for the services of counsel in his behalf.

This adjudication is in conformity with the modern cases. The decision is accompanied in 28 L.R.A.(N.S.) 761, by a note which discloses a few early cases in which it seems to have been held that counsel fees and expenses of bringing suit are recoverable as part of the damages in an action for tort, even though only compensatory damages were allowed. These cases, however, it is safe to say, cannot at the present time be regarded as authority.

Election—destruction of registry list—effect.—A novel question was considered in the recent Louisiana case of *State ex rel. Reid v. Lebleu*, 52 So. 849, 28 L.R.A.(N.S.) 989, holding that a registered voter is not disfranchised because of the

destruction by fire of all the registrar's records.

It is further determined that a voter who has registered, and whose registration papers are destroyed, is not in the category of a voter who has not registered; that he cannot be made to register anew, as if he had never before been a registered voter; and that while the registrar has authority to protect his office from imposition, at the same time he may permit registered voters to have their names placed on the new poll book.

Equity—jurisdiction—unrelated claims.—It has been laid down that equity will not assume jurisdiction over a proceeding to enforce the liability of the stockholders in an insolvent corporation, whether such liability is based upon a statutory provision, is for unpaid stock, or arises from some other transaction or dealing with the corporation, where such liability is fixed in amount and is due from different stockholders by reason of their individual liability, if the sole ground for equitable intervention is that a multiplicity of suits will thereby be avoided, even though to some extent there is a community of interest and a similarity of questions of law and fact involved in the controversy.

This is also the doctrine of *Rogers v. Boston Club*, 205 Mass. 261, 91 N. E. 321, holding that a bill in equity will not lie in behalf of a receiver of a club against its members, to recover from them dues owing under its by-law and the purchase money of supplies received from it, since the claims are cognizable at law, and are not common in such sense that they can be joined to prevent a multiplicity of suits.

The case law dealing with this subject is collated in a note accompanying this case in 28 L.R.A.(N.S.) 743.

Equity—mistake of law—relief.—It is held in *Dolvin v. American Harrow Co.* 125 Ga. 699, 54 S. E. 706, that an honest mistake of law as to the effect of an instrument, on the part of both contracting parties, when such mistake operates as a gross injustice to one and gives an unconscionable advantage to the other, may be relieved in equity, or under equitable pleadings, in a proper case.

This decision rests upon the principle that equity, in a proper case, will reform a contract so as to make it speak the actual agreement between the parties. It is accompanied in 28 L.R.A.(N.S.) 785, by an exhaustive note which discusses the large body of case law upon the subject.

Execution—lien on legacy.—In the West Virginia case of *Park v. McCauley*, 67 S. E. 174, 28 L.R.A.(N.S.) 1036, it is held that a writ of fieri facias in the hands of an officer for execution is a lien upon a legacy given to the debtor.

This case seems to be one of first impression.

Executor's account—funeral expenses—duty of court.—It is held in the Ohio case of *Kroll v. Close*, 92 N. E. 29, to be the duty of the probate judge, upon the hearing of an administrator's or executor's account, whether exceptions have been filed thereto or not, to scan closely the amounts claimed to have been paid for funeral expenses; and that in the absence of statutory or testamentary provisions, the allowance for such expenses must be reasonable, having regard to the amount of the estate, the station in life of the deceased, and the customs of the people in the same station, and, if unreasonable and extravagant, should be disallowed, even as against legatees and next of kin.

The recent decisions upon the question as to what items and amounts are allowable, as funeral expenses, against deceased's estate, are collated in a note appended to the report of this case in 28 L.R.A.(N.S.) 571, the earlier cases having been discussed in a note in 33 L.R.A. 665.

Highways—obstruction—special damage.—In general it may be said that an individual traveler on a highway is entitled neither to bring an action to abate an obstruction thereon nor for damages, unless his injury is different in kind and degree from that suffered by the public generally. But one having a contract with the Federal government to carry mail over a certain route six times a week, who is compelled to take a circuitous route because of the negligent

destruction of a bridge, is held in *Sholin v. Skamania Boom Co.* 56 Wash. 303, 105 Pac. 632, to suffer special damages giving him a right of action against the one through whose negligence the bridge was destroyed.

The case law upon the question whether the fact that one is prevented by an unlawful obstruction from using a highway causes him a special damage which will sustain an action by him against the wrongdoer is discussed in a note appended to this decision in 28 L.R.A.(N.S.) 1053.

Injunction—deed—restrictive covenant—violation.—That a court of equity will restrain, notwithstanding the changed condition of the neighborhood in which a lot is situated, the violation of a covenant in a deed conveying it, whereby the grantor, in part consideration for the conveyance, stipulates and agrees for himself, his heirs, and assigns, touching and concerning an adjacent lot which he then owns, "that the only building put upon said lot shall be a residence and the necessary attachments, and that it shall be used for no other purposes than that of a family residence, and shall cost not less than \$5,000 for the residence alone," is held in *Brown v. Huber*, 80 Ohio St. 183, 88 N. E. 322, which is accompanied by a note in 28 L.R.A.(N.S.) 705, collating the cases on the right to enforce a restrictive covenant, as affected by a change in the neighborhood.

Insurance—disability—liability for death.—That death is not the kind of disability contemplated by a policy providing for indemnity to insured in case of his total disability is held in the recent Iowa case of *Hill v. Traveler's Ins. Co.* 124 N. W. 898, 28 L.R.A.(N.S.) 742, which follows the few earlier decisions on the question.

Marriage—evasion of law—validity.—The general rule in this country, contrary to the rule sustained by the weight of authority in England, is that the capacity of the parties to marry, as well as the formal validity of the marriage, is in general to be determined by the law of

the place where the marriage is celebrated, rather than by the law of the domicile of the parties. Some of the cases, however, while conceding this to be the general rule, refuse to recognize the marriage, though valid by the law of the place where it was celebrated, if the parties were domiciled at the forum and went into the other state in order to evade the law of their domicile, upon the ground that it would be contrary to public policy of the forum to recognize such a marriage.

The general rule, however, was applied in the recent Nebraska case of *State v. Hand*, 126 N. W. 1002, holding that a marriage which is prohibited by statute because contrary to the policy of the laws of a state is yet valid if celebrated elsewhere, according to the laws of the place where celebrated, even if the parties are citizens and residents of the state, and have gone abroad for the purpose of evading the laws, there being no legislative enactment that such marriages out of the state shall have no validity there.

As appears by the note appended to this case in 28 L.R.A.(N.S.) 753, the general rule was applied notwithstanding the facts were such as to have rendered the exception applicable if the court had seen fit to adopt it. The decision is even stronger from the fact which appears from the briefs, that the marriage was challenged on the ground that it violated the miscegenation statute of Nebraska, and the case involved the right of the parties to live together in Nebraska in the marital relation, and not merely the question of property rights. It would seem that no statute on the subject of marriage would be more likely to be regarded as a distinctive part of the public policy of the forum, which the courts would not suffer to be evaded by a marriage between their own citizens celebrated in another state, than a statute forbidding marriage between persons of the white and colored races.

Master and servant—explosives—lightning.—The unusual question of the liability of the master engaged in blasting in quarries and mines, for injuries resulting from an explosion of dynamite by

lightning, was passed upon in the Iowa case of *Brown v. West Riverside Coal Co.* 120 N. W. 732, annotated in 28 L.R.A.(N.S.) 1260, holding that a master who negligently stores high explosives in a room provided for the use of workmen in storing tools and clothing and seeking shelter from storms cannot escape liability for the death of a workman killed by an explosion, by the fact that it was caused by lightning.

Mortgagee—restrictive covenant—right to enforce.—The right of a mortgagee of real property to enforce a building restriction imposed on neighboring property for the benefit of the property mortgaged appears to have been considered for the first time in *Stewart v. Finkelstone*, 206 Mass. 28, 92 N. E. 37, 28 L.R.A.(N.S.) 634, upholding the right of a mortgagee to maintain a suit to enjoin the violation of such a restriction.

Public improvement—special assessment—attorney's fees.—While there has been much conflict upon the general question as to the validity of statutory provisions for attorney's fees, there seems to be no doubt as to the validity of statutory provisions for such fees in proceedings involving collection of taxes or special assessments, the courts being agreed that the legislature may impose liability for attorney's fees upon delinquent debtors of the state or its agencies.

So, it has been held in the recent California case of *Engelbrechtsen v. Gay*, 109 Pac. 880, annotated in 28 L.R.A.(N.S.) 1062, that the legislature may allow an attorney's fee against one whose delinquency makes necessary a proceeding to enforce a special assessment for public improvements against his property, although no such fee is allowed in his favor.

Municipal corporation—injury to employee—necessity of notice.—A statutory provision that all claims for injury alleged to have been caused by defects, want of repair, or obstruction of the streets of a city, must be presented to the council, is held in *Giuricevic v. Tacoma*, 57 Wash. 329, 106 Pac. 908, to be inapplicable to an injury to a workman engaged in repair-

ing a street, by the fall of an electric light pole maintained therein, since the injury did not result from obstruction of the street as a place of travel, and the statute did not contemplate presentation of claims arising from failure to furnish employees a safe working place.

This is a question upon which there seems to be but two earlier authorities, both of which are considered in a note appended to the report of the case in 28 L.R.A.(N.S.) 533.

Partnership—purchase of judgment—set-off—It seems that there is no principle of equity which forbids one partner from purchasing with his own funds a judgment or other evidence of indebtedness against his copartner in business, or forbids him from enforcing its collection out of the firm assets.

The recent Virginia case of *Miller v. Ferguson*, 65 S. E. 562, 28 L.R.A.(N.S.) 618, holds that one member of a partnership organized for a limited purpose may purchase with his own funds a judgment against his copartner having no connection whatever with the partnership transaction, prior to the institution of any proceedings affecting the partnership affairs, or the existence of any funds out of which the latter is entitled to claim profits, and use the same as a set-off in settlement of its accounts.

Public improvement—assessment of benefits.—The theory upon which special assessments for public improvements are based and justified is that the property against which they are assessed derives some special benefit from the improvement. It follows, therefore, that the property can be assessed only to the extent that it is benefited by the improvement. Benefits arising from improvements which depend upon contingencies and future action of public authorities cannot be considered in estimating the assessment, though they may form part of a general plan for public improvement.

This is the view taken in the recent Missouri case of *Kansas City v. St. Louis & S. F. R. Co.* 130 S. W. 273, annotated in 28 L.R.A.(N.S.) 669, holding that benefits to accrue from an improvement consisting as a whole of the

cutting down of the grade of a street, the construction of a viaduct, and the acquisition of private property to widen a street, cannot be assessed to pay for the cutting down of the street and the acquisition of the property, where that would be of no benefit to the public without the viaduct, and no definite plan as to it has been adopted, but it is merely talked about as desirable, without any present means on the part of the municipality to build it.

The earlier cases generally held, in accord with *Kansas City v. St. Louis & S. F. R. Co.*, that only such benefits can be considered as arise from improvements which have been expressly authorized and provided for.

Railroad—side track—compulsory construction.—It is quite generally held that, in the absence of constitutional or statutory provisions, a railroad company is not obliged to build sidings or spurs to connect its main tracks directly with the establishment of a private shipper, or to maintain such side tracks when built, or to permit or maintain connection therewith when they are built by the shipper.

But the case of *State ex rel. Mt. Hope Coal Co. v. White Oak R. Co.* 65 W. Va. 15, 64 S. E. 630, 28 L.R.A.(N.S.) 1013, holds that where, an order that "reasonable provision" be made by it for the transportation of coal and coke offered it for shipment, as required by W. Va. Code, 1906, § 2364, and the facts and circumstances demand it, a railroad company may be compelled by mandamus to construct and operate upon its right of way a side track and switch for that purpose.

The decision finds support in the earlier authorities, as appears by the note appended to the L.R.A. report of the case.

It has also been held in the recent *Washington* case of *Northern P. R. Co. v. Railroad Commission*, 108 Pac. 938, 28 L.R.A.(N.S.) 1021, that the attempt by the state to compel a railroad company to construct and operate a spur track to a private mill is void, as a taking of property for private use without due process of law.

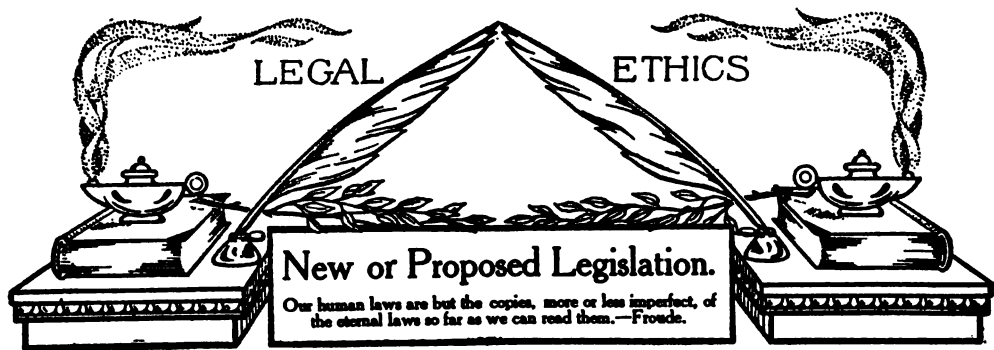
Tax—voluntary payment—recovery.—There is but little authority upon the question whether the fact that a taxpayer pays his tax for the purpose of obtaining a discount will render the payment involuntary, so that he may subsequently recover the amount paid if the tax proves invalid.

The cases dealing with this subject are collated in a note in 28 L.R.A.(N.S.) 1045, appended to the recent case of *Louisville v. Becker*, 129 S. W. 311, which holds that one who pays an illegal tax to secure the rebate allowed by law for prompt payment cannot recover the money paid, where, under the statute, he has a right to test in court the right to enforce the tax, and the taxing district has applied the money to the purposes for which it was collected.

Trademark—infringement—use of own name.—It is the general rule that while every person is entitled honestly to use his own name in business, either alone, or associated with others in a partnership or corporation, he may not use his name as an artifice to mislead the public as to the identity of the business or corporation, or the article produced, and thereby unfairly divert the business of another, who first lawfully selected the tradename, established a business, and produced an article which is identified by the name.

This principle was applied in *Ætna Mill & E. Co. v. Kramer Milling Co.* 82 Kan. 679, 109 Pac. 692, holding that a person will not be prohibited from using his own name upon marks or brands placed upon articles of his own manufacture, merely because it has first been rightfully used by another, who has established the reputation of, and built up trade in, like articles by the use of the same name in a trademark, sign, or label thereon; but such person will not be permitted, by any artifice or device or otherwise, to induce the belief of customers or others desiring to purchase that the articles so marked are the products of the other.

The case is accompanied in 28 L.R.A.(N.S.) 934, by the recent decisions on the question, the earlier authorities having been collected in a note in 1 L.R.A.(N.S.) 660.



Municipal Government by Commission.—The commission idea for the government of municipalities, says the Boston Transcript, seems likely to receive a wider hospitality in the middle West the coming year than at any previous time. The Illinois legislature passed an enabling act last spring, and as a result twenty-five cities in that state are preparing to vote on the question. At least a half-dozen cities in Michigan are on the same road, and about all the cities in Kansas not now under the commission plan are making ready to adopt it. Nor is the movement confined to the Mississippi valley. Practically every city in western New York, it is said, will be asking next winter for new rule charters, with the commission as the underlying idea.

The Parcels Post.—The local merchants of the country are very generally and very mistakenly opposed, says the California Weekly, to the parcels post idea. Here are a few figures not without interest in that connection. Number of rural routes in the United States, 40,000; monthly income per wagon, \$14.92; monthly cost per wagon, \$72.16; average load per wagon, 25 pounds; average load per express wagon, 1½ tons. Now just let those rural delivery routes do a parcels post business, and they will soon be able not only to earn their own way, and remove an enormous postal deficit, but perform a most acceptable service to the patrons of the routes, and stimulate local trade.

If Postmaster General Hitchcock will, in his forthcoming report, stop advocating a higher postal tax on newspapers and periodicals, the greatest educational influence the country possesses, and urge

Congress to give the people a parcels post, so that the rural carriers will have something to carry beyond a few pounds on each trip, he will be doing something, observes the Farm Journal, that will redound to his credit by placing the postal service on a paying basis and satisfying the urgent demand of the people.

As we write it is announced that four more cities of "barbarous Mexico" are to have a parcels post agreement with the United States, by which packages weighing up to 11 pounds may be mailed from any part of the United States for the sum of 12 cents per pound, while within our own borders only 4 pounds may be carried between cities only a few miles apart, or across a river, and at a cost of 64 cents.

This anomalous condition does not lie within the province of the Postmaster General to correct, it rests with Congress.

With such a system established it is reasonable to expect that there will be an end of postal deficits, the public will be properly served, and the government will have no further incentive or excuse for interfering with the business and rights of publishers and the liberty of the press, and the full and legitimate influence and development of the public press.

Rochester's Juvenile Court.—The new law transferring to the Monroe County (N. Y.) Court jurisdiction in juvenile cases from all parts of the county became effective on January 1st.

Procedure under the new law in juvenile cases will be radically different from that which has hitherto been followed under the police justice. The chief aim of the reform movement which

resulted in the enactment of this and similar statutes is to remove cases in which the children are involved, as far as possible from the kind of surroundings usually found in a criminal court. The jurisdiction and powers of the county court being much broader than those of the police court, it is believed that the former will be better able to pursue the wisest course in each particular case. The sessions of the new juvenile court will not be public, and every effort will be made to eliminate notoriety that might prove a source of future embarrassment to the child.

The constitutionality of the Rochester juvenile court law has been questioned by Judge T. D. Hurley, editor of the *Juvenile Court Record*, in the January issue of that publication. Judge Hurley declares that this act is a menace to liberty. He summarizes its alleged defects as follows:

"First, star chamber hearings.

"Second, the superior rights of the state as against the parent.

"Third, informal notice or no notice at all to the parent.

"Fourth, the exclusion from the court room of persons interested in the case when the same is on hearing.

"Fifth, that the child should remain a ward of the court during his minority, subject to the visitation of the probation officer or other court appointee.

"Sixth, the state institutions are relegated to the class of third-rate boarding houses, without any rights in the premises whatever.

"Seventh, it fails to provide a definition for neglect or delinquency, leaving that fact to be determined solely by the judge.

"Eighth, the parent is denied the right to have his child committed to an institution which is controlled by persons holding the same religious views as the parent."

We shall submit to our readers in a future number such reply as the framers of the law may make in answer to Judge Hurley's criticism.

Insurance against Unemployment.—Unemployment, the bugbear of industrial communities, says an Exchange, has in-

creased greatly of late years, especially in the highly industrialized countries of Europe. It is the problem of problems in England, while German economists have begun to study it in their thorough-going, practical way. The steady improvement in the technical processes by which products are turned out, the continual concentration of manufacturing enterprises into trusts, and the seasonal periods of inactivity that exist in many industries, have combined to create what has been called the reserve army of industry. All this is quite apart from the acute unemployment that is due to periods of industrial depression at times.

The Belgian answer to unemployment, which, from the fact that it originated in that city, is called "The System of Ghent," is insurance. The labor unions of Ghent collect dues from their members at work to form a fund for the maintenance of any who are legitimately idle. To this fund the city of Ghent contributes, so that to every dollar the union pays to unemployed members the city adds fifty cents. In this way the union's mutual insurance fund, which would be quickly depleted in time of depression, is kept up by municipal aid.

This system, which has been in vogue for six years, has spread to other Belgian cities, to those of Holland, Germany, France, Norway, and Denmark. In some cases a number of cities have combined their funds, so as to make the scheme more stable. Proper safeguards are maintained, so that unemployment due to strikes, lockouts, sickness, accident, or the fault of the individual workman, gives no claim to a share of the fund. Moreover, an idle workman must accept the first suitable work that is offered him, so long as the wages are up to the union scale. Thus an effective municipal employment bureau is built up in connection with the disbursement of the unemployment fund. This bureau finds work for the idle, and by a daily control card system keeps close tab on the beneficiaries.

The obvious criticism of this system for use in America, at least, is that it takes no cognizance of the nonunion workman, nor, in fact, of the unskilled laborer. As for the latter, it would be easy to provide

for him by public works, such as road building. This is the British plan. The tendency of the Ghent system, however, would be to force all skilled labor into unions, and that is a tendency that might not be entirely relished in this country of individualism and liberty. Nor has unemployment with us come to the pass, perhaps, where organized measures are necessary to fight it.

But insurance for unemployment is of a piece with old-age pensions and compulsory insurance against accident and sickness. We may yet find it necessary to adapt the System of Ghent to our own special needs.

Compensation for Use of Inventions.—In a paper read before the patent, trademark, and copyright section of the American Bar Association, Mr. George A. King, of Washington, District of Columbia, discussed the act of Congress approved June 25th, 1910, providing that the owner of a patented invention which is used by the United States without license may recover reasonable compensation by suit in the court of claims. Mr. King said in part: This legislature constitutes an important step forward in the recognition of the rights of patentees. Before the passage of this act the recovery of the patentee, for the use of his invention by the government, depended not so much upon the meritorious question whether his invention had been used by the government and a benefit derived therefrom, as upon the question whether the officer using the patent had had sufficient sense of justice to acknowledge

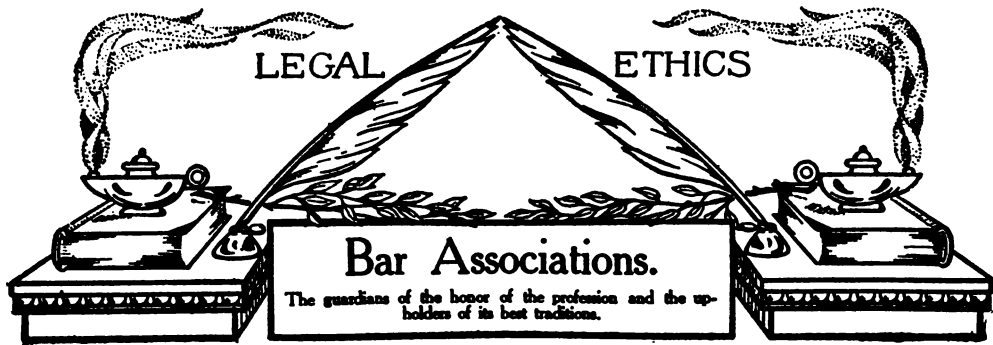
that he was using the invention, and to make a promise of more or less distinctness that the government would compensate the inventor. Where the officer was willing to make such an acknowledgment, the inventor might recover under it in the court of claims. Where the officer defiantly infringed the patent, refusing to recognize, expressly or impliedly, the rights of the patentee, there was no remedy. Such a distinction was obviously unworthy of perpetuation in the jurisprudence of any civilized government.

The remedy by injunction against the officer was very unsatisfactory. It turned what should be regarded as an act of state on the part of the government, into a private tort of an individual.

It is a much more enlightened public policy to allow the government to avail itself, with perfect freedom, of the inventive skill of the world, subject only to the condition of the 5th Amendment to the Constitution, that the use of the inventor's property shall be accompanied by "just compensation."

Finally, the passage of this act can hardly fail to operate as a stimulus to inventors for the exercise of their genius in perfecting inventions which will be of value to the government; particularly, in those lines in which, as in the case of heavy ordnance, armor plate, and the other military and naval equipment, and to nearly the same degree, in improvements in lighthouses, postal devices, and many other lines, the invention can be of little or no value to anyone but the government.





Code of Ethics.

A recent number of the Outlook gives a list of states whose bar associations have ratified and adopted the canons of ethics for the legal profession which were formulated and accepted by the American Bar Association two years ago. The list includes the bar associations of the seventeen following states: New York, Pennsylvania, Illinois, New Jersey, Maine, Iowa, Florida, Tennessee, South Dakota, Kansas, Indiana, North Dakota, Ohio, Washington, Nebraska, Louisiana, and Vermont. The Outlook goes on to explain that this has not been accomplished without opposition and discussion, and adds: But if we understand the facts aright, the opposition has been not to the principles embodied in these canons, but to the adoption by the states of the canons formulated by a national association. A certain characteristic of American pride or independence, prevailing curiously where state rights are not supposed to be popular, serves to prevent one state from accepting the ethical principles as formulated by any organization outside of that state.

If this is the correct explanation, comments the Omaha Bee, it certainly reflects a peculiar state of mind among lawyers who make up the various associations which have balked on indorsing the proposed professional code.

The animated discussion in the Pennsylvania Bar Association, says the Philadelphia Ledger, which preceded the adoption of the canons of ethics set forth by the American Bar Association, did not indicate any difference of opinion among the many able lawyers who engaged in it, upon any of the ethical principles involved. The difference was rather of

judgment and taste as to the form of expression.

The authority of any code of morals or manners must depend upon the universality of its acceptance. A universal rule is more impressive than a local rule. If a representative body of the whole American bar has agreed in setting forth certain canons for the guidance of professional conduct, they must carry more weight than any similar code of rules adopted within a single state, even though these might be in some respects more explicit or more succinct.

It is easy to maintain, no doubt, that a code of ethics is of no practical use, that honor and propriety cannot be taught by rule, and that a man who needs to be cautioned against dishonorable conduct will not be deterred by mere formal precept. He may be if he knows that the precept expresses the conscience and judgment of his profession, and of those upon whose recognition he must depend. The usefulness of a code will depend upon the firmness and sternness with which it is enforced by the accredited authority of the profession.

Work of New York's Grievance Committee.

During the last year 500 complaints have been filed against members of the bar, with the New York City Bar Association and the County Bar Association. This is an increase over last year of at least 170 cases. In the year 1909 the Bar Association received 370 complaints, which was an increase of 143 over the year before.

The cases that go direct to the Bar Association are handled by the grievance committee. This committee is made up of leading men in the profession. They

serve without further compensation than is furnished by the fact that they are driving out the crooks. Each complaint is investigated carefully. Many are dismissed by reason that they have little or no foundation.

The charges that the grievance committee is called upon to investigate run all the way from forgery and larceny to an effort on the part of a client to recover papers or other documents that have figured in litigation. The most common charge is breach of trust. Attorneys collect moneys on behalf of clients, turn the collections into their personal bank accounts, with the result that when they run short of funds they appropriate the money intrusted to them for their own uses. Subornation of perjury is not an uncommon complaint.

Out of the total number of complaints received last year testimony was taken in fifty-three cases. The committee decided that twenty-seven of these cases warranted prosecution in the courts. The executive committee was called on to furnish prosecutors for these cases. A number of the actions demanded much time and application on the part of the prosecutors, as many intricate questions were involved. The defendants were represented by able counsel, and the cases in many instances went to the court of appeals. Among the lawyers who served the committee in the trials were William D. Guthrie, Egerton L. Winthrop, Jr., Abram I. Elkus, and Henry A. Stickney.

Unscrupulous and shrewd attorneys resort to many tricks to cheat clients and at the same time escape punishment. They are sufficiently clever to foresee or anticipate that their sharp practices will result in complaint, and prepare for such a contingency. As they go about doing what they should not do, they, at the same time, prepare a defense that will go far enough to save their skins. This is one of the reasons that action cannot be instituted against them by the representative of the Bar Association.

It is only a short time ago that many actions instituted against attorneys were killed by restitution; usually clients were satisfied to get what was due them, and had no desire to go further. But restitution will not save the offending

lawyer now. The courts have held in effect that restitution only goes to show that an offense has been committed, and does not remove the cause for action.

In a majority of cases the court of appeals has sustained the decisions of the appellate division in decisions rendered in actions instituted against attorneys by the grievance committee. The Bar Association has fought the cases to a finish and won out. The lesson that lawyers have drawn from that fact is that, when the grievance committee gets after them, they must employ able counsel to defend them, and devote their time and efforts to save themselves from punishment. This situation has grown up only in the last three or four years.

Much of the time of the office force in handling the complaints in the first instance is given up to hearing charges that have only an imaginary foundation. All complaints are heard, no matter who the lawyer may be. There are people who get a taste of law and never recover from it. They go crazy on the law and become perpetual litigants. They run from one lawyer to another, demanding that all sorts of things be done for them. When the lawyers cannot see it their way, they go to the Bar Association with a complaint. Such cases never get beyond the original stage.

The association has asked for no aid, and will not; but there is a great chance for some philanthropist to establish a fund to assist in the work of cleaning up the legal profession.

Chicago Bar Association's Grievance Committee.

"If you think that a lawyer has cheated you of your money, don't say to yourself, 'All lawyers are crooks,' and charge the amount up to profit and loss," advises John L. Fogle, attorney for the grievance committee. Take your complaint before the grievance committee of the Chicago Bar Association. "I should imagine," declared one to whom Mr. Fogle was talking, "that you would be besieged with complaints against so-called 'shyster' lawyers." "The committee gets perhaps a hundred and fifty

complaints a year," replied Mr. Fogle. "Do you investigate every complaint you receive?" "Yes, though often it can be told, from the nature of the complaint and sometimes from the person who registers it, how it will have to be treated. When we receive a complaint from a lawyer's client, we note what the complainant has to say about the case, and submit it to the lawyer against whom it is directed. Then we wait for his answer. He prepares a reply to the charges, introducing all the evidence he can, stating his position as clearly as is possible for him to do. When the attorney's answer is forwarded to us we consider it carefully and decide whether disbarment proceedings should be brought against him, whether he should be reprimanded, or whether the charges are unfounded."

"It would seem," was suggested, "that the greater number of complaints would come from disgruntled persons who lost a poor case and who thought that their lawyer 'fleeced' them." "Many of them do," said Mr. Fogle. "Does the grievance committee find itself overworked with the investigation of those 150 charges yearly?" was asked. "It does not," was Mr. Folger's answer, "though if more persons knew that such an organization existed I imagine that there would be many more charges filed than we now receive."

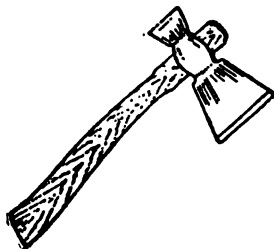
The members of the grievance committee are James G. Handy, chairman, George E. Chipman, S. Crawford Ross, Ralph Crews, and Henry G. Miller.

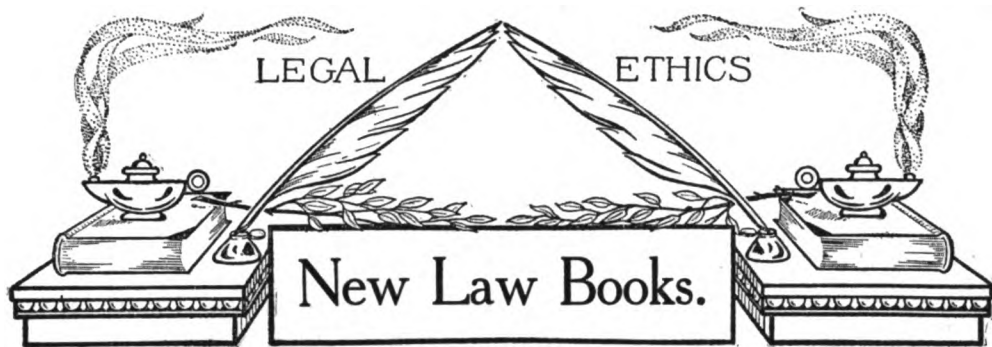
Position of Our Judiciary.

Honorable A. A. Bruce, of Grand Forks, the newly elected president of the

North Dakota Bar Association, says upon this subject:

"Paradoxical though it may seem, there is no one who is closer to, and at the same time further removed from, the great masses of the American people, than the occupant of the bench. Especially is this true of the elective judge of an American court of last resort. He is constantly criticised and misunderstood. Yet he has no adequate means of defense. His duties are so arduous that he must of necessity be a student and a recluse. His position is so pre-eminently a political one, however, that he must of necessity keep responsive to the political and social tides, and pay heed to the politicians and to the powers behind the throne, whether the powers be populist, corporate, or democratic in the broader and higher sense of the word. Especially is this true where the system of primary elections prevail. He is the subject of frequent criticism. Yet he has no popular forum. He is both of the world and out of the world. He depends for election upon the public support and the popular suffrage. Yet his office is so surrounded by tradition and dignity, and so careful must he be not to express an opinion in advance on the questions which may come later before him for judicial determination, that he can but rarely appear upon the public platform, and but rarely defends himself or his decisions in the popular press. He has the Law Reports, it is true, in which he may write, but these the general public never read. His position demands the highest wisdom and the fullest opportunity for ample thought and complete freedom from petty annoyances. Yet he has no opportunity for this ample thought and no freedom from annoyance."





"New Code of International Law."—By Jerome Internoscia. (International Code Co., New York) \$12.00.

The author presents in this work a proposed International Code, dealing with the various phases of public international law and private international law, and which includes chapters defining the organization and powers of a proposed international assembly, the jurisdiction of the necessary courts, rules of procedure, and the methods of executing their judgments.

Mr. Internoscia is a resident of Montreal, a graduate of McGill University, a member of the bar of the Province of Quebec, and has acted as Consul General for Italy.

The text is arranged in three parallel columns composed of English, French, and Italian,—languages by the use of which the population of half the globe may be appealed to. The work is compiled from the laws, treaties, and treatises that have been published in these tongues, so edited and arranged as to form a system of jurisprudence of world-wide application and designed to further the advent of the "era of universal peace," to the advancement of which the work is dedicated.

This Code, which has been prepared with great labor and at large expense, will interest the publicist and statesman, the jurist, the advocate of arbitration, and the lover of peace. It is prophetic of the coming age in which the nations of the world will be brought closely together by the bonds of universal law.

"Income Taxation."—By Kossuth Kent Kennan. (Burdick & Allen, Milwaukee, Wis.) \$3.50 net.

This work discusses the important question of income taxation from a prac-

tical, rather than a theoretical, standpoint. It presents the methods and results of such taxation as disclosed by the experience of some forty-five foreign countries which have adopted it, and devotes four interesting chapters to a discussion of the history and operation of income taxation in the United States.

The author presents a general review of the litigation which has arisen in reference to the Federal income tax of 1894, and the pending cases involving the validity of the corporation tax law. He believes that we should avail ourselves of the practical knowledge of others in the formulation of such income tax laws as we may hereafter adopt, and he has done much in his book to make that knowledge available.

The work is replete with condensed information much of which has been gleaned from books in foreign languages not readily accessible to the average reader. The numerous references contained in the notes and the bibliography appended to the book open a wide field of research to the inquirer who desires to become familiar with the learning upon this subject.

"Black's Law Dictionary."—By Henry Campbell Black M. A. (West Publishing Co., St. Paul, Minn.) Second Edition. \$6.00.

Black's Law Dictionary has occupied a unique position since its first publication. It is the most complete one volume law dictionary published, and has been especially popular with students. It has also been a favorite with lawyers who wish to get the most working value in a complete library. In the new edition Mr. Black has carefully revised every part of the work, and has added many citations to decided cases, as well

as new terms, particularly in the field of legal medicine. We believe that the work can be recommended to all classes.

"Real Estate Brokers." By Fred L. Gross. 1 vol. Buckram, \$4.

Joslyn on "Corporations."—(Illinois) 1 vol. Buckram, \$5.

"The Modern Criminal Science Series."—A series of translations of the most important works of eminent continental authors on criminal science, issued under supervision of American Institute of Criminal Law and Criminology. In 9 vols. First 2 vols. now ready. Vol. 1, "Modern Theories of Criminality."—by C. Bernaldo de Quiros. Translated by Dr. Alphonso de Salvio. Cloth, \$4. Vol. 2, "Criminal Psychology."—By Hans Gross. Translated by Dr. Horace M. Kallen. Cloth, \$5.

Mikell's "Cases on Criminal Procedure."—(American Case Books Series) Buckram, \$3.50.

"The New Code of Georgia."—By Judge John L. Hopkins. Special edition-de-luxe. Full limp Russia binding, 8¾x6, \$10. Full limp Russia binding, 9⅝x7¼ (having 1¼ inch more margin for notes), \$11.50. Interleaved with

union skin linen paper, every other leaf being entirely blank, \$16.50.

"Georgia Laws 1910."—\$2.10.

"The Principles of International Law."—By T. Joseph Lawrence. 4th ed. \$3.

"Law, Lawyers, and Lamba."—By Stillman F. Kneeland. \$1.50.

"Commentaries on the Law in Shakespeare."—By Edward J. White. 1 vol. \$3.50.

"Digest of Mississippi Decisions."—By M. McWillie & Thompson. Including vols. 74-93 Mississippi, both inclusive. \$10. To be ready for distribution during the present year.

"1910 Supplement to Birdseye-Cumming & Gilbert's Annotated Consolidated Laws of New York."—Canvas, \$6.

"New Supplementary Digest of Oregon Reports."—Covering vols. 44-54 inclusive. Connecting with Montague's Digest of vols. 1-43. 1 vol. \$7.50.

"Popular Law-Making."—A study of the origin, history, and present tendencies of law-making by statute. By Fred-eric J. Stimson. Cloth, \$2.50.

"Trusts and Trustees."—By Jairus W. Perry, 6th ed. Edited by Edwin A. Howes, Jr. 2 vols. Law Canvas, \$13.

Recent Legal Articles in Law Journals and Reviews.

Abatement.

"Construction of 'Survival Act' and 'Death Act' in Michigan."—9 Michigan Law Review, 205.

Adoption.

"Adoption without Consent of Natural Parents."—17 Case and Comment, 391.

Assignment.

"The Validity of Laws Regulating Wage Assignment."—5 Illinois Law Review, 343.

Attorneys.

"The Man Behind the Lawyer. (Legal Ethics.)"—43 Chicago Legal News, 143.

"The Code of Ethics."—41 National Corporation Reporter, 529.

"Professional Rights and Wrongs."—32 Australian Law Times, 38.

Automobiles.

"License Duties on Motor Cars."—74 Justice of the Peace, 566.

Bankruptcy.

"Bankruptcy Law, Its History, and Purpose."—52 Legal Adviser, 5.

Blackstone.

"Sir William Blackstone."—46 Canada Law Journal, 716.

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"Railway and Canal Bridges."—74 Justice of the Peace, 603.

Champertry.

"Maintenance and Champerty."—46 Canada Law Journal, 713.

Congress.

"The Legislative Power of Congress under the Judicial Article of the Constitution."—25 Political Science Quarterly, 577.

Conspiracy.

"Criminal Conspiracy Needing Overt Act to Make it Indictable."—71 Central Law Journal, 387.

Constitutional Law.

"A Government of Law or a Gov-

ernment of Men."—193 North American Review, 1; 43 Chicago Legal News, 158.

"State v. Federal Control."—3 Lawyer & Banker, 415.

"The Force and Effect of the Thirteenth Amendment to the Constitution of the United States when Considered in Reference to the Treaty Made in 1803 between France and the United States, Respecting the Cession of the Territory of Louisiana, and the Force and Effect of Such Amendment Considered Apart from Such Treaty."—71 Central Law Journal, 441.

"The Three Last Amendments to the Constitution of the United States."—44 American Law Review, 561.

Corporations.

"The Practical Features of Corporate Organization and Management."—10 The Brief, 201.

"Corporation Liens on Stock."—41 National Corporation Reporter, 635.

"Practice of Law by Corporations."—41 National Corporation Reporter, 529.

"Impolicy of Modern Decision and Statute Making Corporations Indictable and the Confusion in Morals Thus Created."—71 Central Law Journal, 421.

Courts.

"Changing Attitude of Courts toward Social Legislation."—5 Illinois Law Review, 222.

"Criticism of Courts by Lawyers and Laymen."—10 The Brief, 186.

"The Illinois Supreme Court and Its Method of Work."—43 Chicago Legal News, 131.

"The Methods of Work in the Illinois Supreme Court."—43 Chicago Legal News, 134; 41 National Corporation Reporter, 500.

"Where Defendant is a Nonresident, by What Acts, without Taking up Residence Therein, can He Make it Possible for the Legislature and the Courts of Another State to Adjudicate against Him without His Consent."—71 Central Law Journal, 404.

"Courts and Procedure in Germany."—5 Illinois Law Review, 193.

Criminal Law.

"The Essentials of Crime."—11 Criminal Law Journal of India, 113.

"Criminal Responsibility of the Insane."—3 Lawyer & Banker, 435.

"Reform of Criminal Procedure."—1 Journal of Criminal Law and Criminology, 705.

"Too Much Expected of a Criminal Judge."—59 University of Pennsylvania Law Review, 215.

"Crime and Punishment."—1 Journal of Criminal Law and Criminology, 718.

"Cruel and Unusual Punishment."—5 Illinois Law Review, 321.

"Public Defense in Criminal Trials."—1 Journal of Criminal Law and Criminology, 735.

"The Parole Law."—41 National Corporation Reporter, 497.

"Juvenile Offenders and Their Treatment."—17 Case and Comment, 387.

Democracy.

"Radical Democracy in France. IV."—25 Political Science Quarterly, 656.

Dentists.

"The Word 'Qualified' in the Dentists Act."—32 Australian Law Times, 33.

Depositions.

"Taking Depositions out of Court."—74 Justice of the Peace, 578.

Distress.

"Charges for the 'Man in Possession' in Distresses for Rent."—130 Law Times, 98.

Divorce.

"Divorce — Agency."—41 National Corporation Reporter, 530.

Equity.

"Equity Jurisdiction in Illinois over Irregularities in Execution Sales."—5 Illinois Law Review, 203.

Evidence.

"The Burden of Proof where Mental Incapacity is Pleaded."—44 American Law Review, 538.

"Needed Reforms in the Law of Expert Testimony."—1 Journal of Criminal Law and Criminology, 698.

"Circumstantial Evidence."—74 Justice of the Peace, 577.

Executors and Administrators.

"Power of Personal Representative to Continue Decedent's Business."—23 Bench and Bar, 96.

Fraudulent Conveyances.

"Frauds and Preferences." — 44 American Law Review, 481.

Highways.

"Culs-de-sac as Highways."—74 Justice of the Peace, 566.

Incompetent Persons.

"The Chargeability of Pauper Lunatics."—74 Justice of the Peace, 613.

Infants.

"Child Labor Legislation."—17 Case and Comment, 379.

"Control of Children by the State."—17 Case and Comment, 383.

Jury.

"Reform of the Jury System."—3 Lawyer & Banker, 444.

"Trial by Jury in Civil Actions."—16 Virginia Law Register, 561.

Korea.

"The Reconstruction of Korea."—25 Political Science Quarterly, 673.

Law.

"The Layman and the Law."—3 Lawyer & Banker, 418.

"Progress of the Law."—43 Chicago Legal News, 167.

"Festina Lente. (Legal Progress.)"—59 University of Pennsylvania Law Review, 203.

License.

"Licenses for Tradesmen's and Farmers' Carts."—74 Justice of the Peace, 614.

"Cinematograph Exhibitions—Conditions Which may be Imposed by the Licensing Authority."—74 Justice of the Peace, 601.

Master and Servant.

"Compensation to Workmen Suffering from Disease."—130 Law Times, 75.

"Liability of Master for Wilful or Malicious Acts of Servant. II."—9 Michigan Law Review, 181.

"Employers' Liability Policies."—44 American Law Review, 513.

Mechanics' Liens.

"How to Draw Notices of Mechanics' Liens."—23 Bench and Bar, 13.

Mines.

"The Law Relating to Support."—32 Australian Law Times, 39.

Mortgage.

"The Mortgage Recording Tax."—25 Political Science Quarterly, 609.

Parishes.

"The Sale of Parish Property."—74 Justice of the Peace, 590.

Pensions.

"The Pension Carnival: Favorite Frauds for Tricking the Treasury."—21 The World's Work, 13917.

Pleading.

"A Bill for an Act Concerning Pleadings."—5 Illinois Law Review, 364.

Practice and Procedure.

"Recent Cases on Summary Jurisdiction Practice."—74 Justice of the Peace, 590.

"Revision of Court Procedure in Illinois—A Symposium of Judges."—5 Illinois Law Review, 350.

"A Proposed Judicature Act for Cook County."—5 Illinois Law Review, 336.

Principal and Agent.

"Wrongful Application of Another's Money by a Defaulting Trustee or Agent."—59 University of Pennsylvania Law Review, 225.

Public Lands.

"Southern Pacific Lands."—3 Lawyer & Banker, 451.

Public Policy.

"Some Late Workings of the Doctrine of Public Policy."—44 American Law Review, 551.

Race Suicide.

"A Neglected Factor in Race Suicide."—25 Political Science Quarterly, 638.

Railroads.

"Masters of Capital in America: The Inevitable Railroad Monopoly."—36 McClure's Magazine, 3.

Rates.

"Charter Contracts and the Regulation of Rates."—9 Michigan Law Review, 225.

Senate.

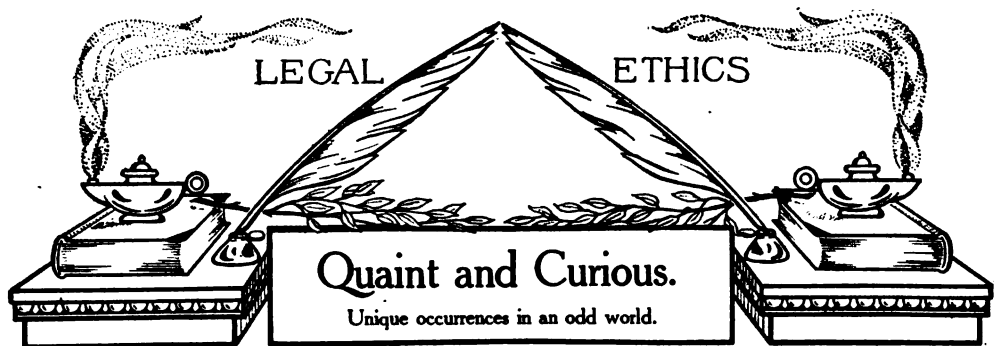
"The California Senatorial Situation."—3 Lawyer & Banker, 423.

Taxes.

"Illinois Central Tax Case."—41 National Corporation Reporter, 534.

Wills.

"Conditions in Will as to Consents to Marriage."—32 Australian Law Times, 37.



Regulating Attorneys.—We are indebted to William M. McCrea, Esq., of Salt Lake City, for the following interesting extracts from a statute passed by the Utah territorial legislature in 1852, and entitled, "An Act for the Regulation of Attorneys:—"

"Sec. 2. No person or persons employing counsel in any of the courts of this territory shall be compelled by any process of law to pay the counsel so employed, for any services rendered as counsel, before or after, or during the process of trial in the case."

"Sec. 5. Any attorney or person assuming to appear before any court in this territory, in any cause whatever, shall present all the facts in the case, whether they are calculated to make against his client or not, of which he is in possession, and shall present the best evidence that he can in the case to the intent that the true state of the case in litigation may be presented before the court, and for a failure to do so, or to comply with all the requirements of this act, shall be liable to all the penalty hereinbefore provided for, and the further penalty of not less than \$1 at the discretion of the court."

In 1854 the legislature further decided that "no laws nor parts of laws shall be read, argued, cited, or adopted in any court, during any trial, except those enacted by the governor and legislative assembly of this territory, and those passed by the Congress of the United States when applicable; and no report, decision, or doings of any court shall be read, argued, cited, or adopted as precedent in any other trial."

Have Minds, if not Souls.—A headnote appended to the report of a case in a recent publication consists of the fol-

lowing definition: "A corporation is an intellectual body created by law."

Had Hopes.—In *Myers v. Pickett*, 1 Hill, Eq. 35, O'Neill, J., in applying the rule in *Shelley's Case*, said: "Notwithstanding I am not well satisfied with either the justice or the reason of the rule, yet I must be content to say, *Ita lex scripta*, and console myself by what is said by one of the great masters of the science of the common law, 'that at some other time, in some other place, and on some other occasion, the wisdom of the rule may appear.'"

Do it Quick.—The plaintiff obtained judgment against the defendant for \$150 in an action brought before a justice of the peace in Kansas. The defendant, without consulting his attorney, paid the amount into the justice's court, after his attorney had filed notice of appeal to the district court, and in the meantime the justice had paid the amount to the plaintiff. In his transcript to the district court the justice made this explanation of the transaction:

"By an order from Attorney Smith through and by defendant Jones verbally the court is ordered indirectly to get the money paid out from the above judgment back into court & do it quick. Having been and always being subject to the attorneys, the court now, this P. M. Sept. 21st orders both plaintiff and his attorney to return all funds immediately into court."

Weary of Well Doing.—A notice of sale of property to satisfy an agister's lien, recently posted in a Kansas city, describes the property and the reasons for making the sale, in this felicitous manner:

One mare, age unknown, color gray, weight about 900 pounds; One top buggy and one set of double harness, or so much thereof as will pay the reasonable charges and expenses for the feed and care bestowed upon said property, said sale being for the purpose of paying said reasonable charges and expenses for the feed and care bestowed upon said property, including the expense of said sale and incident thereto, due, accrued and accruing, said property being the property, presumably, of the world famous renowned and omnipresent John Doe, who placed said property in the care and keeping and submitted the same to the tender mercies of the undersigned at some date during the early part of the present Century, at the same time leaving with the undersigned his solemn promise that he would return and claim his property and pay the reasonable charges of the undersigned for feeding, sheltering and caring therefor, which said property, together with the said solemn promise of the said owner, is still in the care and keeping of the undersigned who, having troubles of his own would fain be relieved of the care and custody of said property and of the said solemn promise of the said owner thereof.

WHEREFORE, the undersigned, hereby gives notice to all the world, including the owner of said property, that he will sell said property, as above stated, and he hereby prays that all mankind who may be in need of such property may be present in their own proper persons at the time and place of said sale, there and then to bid upon said property, to the end that the undersigned may not suffer serious loss as a result of his kindness in feeding, sheltering and caring for said property during the temporary absence of the owner thereof.

WHEREOF, fail not at your peril.

A Poetic Conveyance.—We are indebted to Mr. L. R. Atkins, of Chicago, for an account of the following quaint and curious deed: In book 40 Records of Deeds, in the circuit clerk's office at Virginia, Illinois, is a quaint reminder of the late J. Henry Shaw, a brilliant lawyer and author, who represented Cass county in

the legislature in the early eighties, dying suddenly of heart failure while at the capital in 1884.

The gifted but unfortunate statesman was a *protégé* of War Governor Richard Yates, a contemporary and friend of Lincoln, and had a meteoric career, which is a matter of history. The fatal love of strong drink caused an estrangement from his family, and his last years were melancholy. The pathetic instrument appended was filed for record August 9, 1881:

J. Henry Shaw to Charles E. Wyman.

I, J. Henry Shaw, the grantor, herein,
Who live at Beardstown, Cass county,
within,
For Seven Hundred Dollars to me paid
to-day,
To Charles E. Wyman do sell and convey,
Lot Two (2) in Block Forty (40), said
county and town,
Where Illinois river flows placidly
down,
And warrant the title forever and aye,
Waiving homestead and mansion both
a good-bye,
And pledging this deed is valid in law, I
add herewith my signature
J. Henry Shaw.

(Seal)

July 25, 1881.

I, Sylvester Emmons, who lives at
Beardstown,

Justice of the Peace of fame and re-
nown,

Of the County of Cass, and Illinois state,
Do certify here that on this same date,
One J. Henry Shaw to me did make
known

That the deed above and name were
his own—

And he stated he sealed and delivered
the same

Voluntarily, freely, and never would
claim

His homestead therein; but left all alone,
Turned his face to the street and his
back to his home.

S. Emmons, J. P.

(Seal)

Aug. 1, 1881.

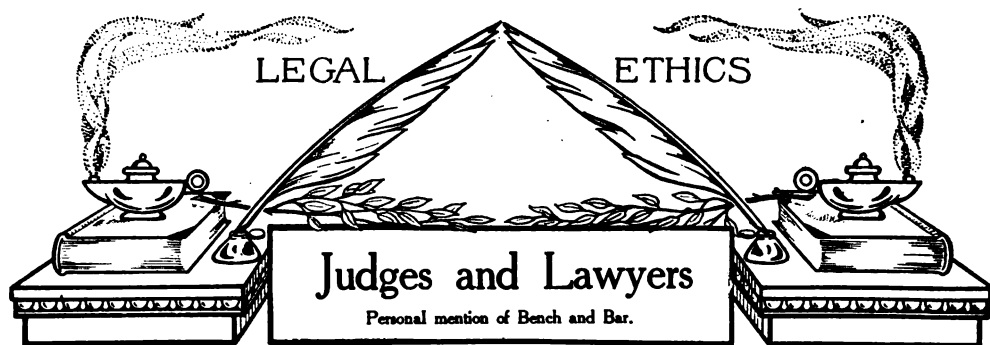
Grand Jury Indicted Foreman.—Among the indictments brought in for gambling by the recent grand jury, one is against J. C. Ross; a prominent merchant of Gulfport, Mississippi, who was foreman of the jury. In some manner, in signing the indictment, Mr. Ross's name was written in the body of the indictment, and, before the mistake was discovered, the grand jury had adjourned and there was no way to remedy the defect. Ross was arrested and made to give bond for his appearance, but when the case is brought up for trial at the next term of court the district attorney will dismiss the case. The individual against whom the indictment was intended is free.

Badly Scared.—In a Missouri nisi prius court recently a suit was in progress in which the plaintiff was seeking to recover for services rendered and material furnished. During the trial the attorneys for the defense had made frequent allusions in regard to the reputation of the plaintiff, but had introduced no evidence on that point. It was a very warm day, and the attorney for the defendant had retired to an adjoining room, where he had removed his coat and waistcoat and was enjoying a calm, cool smoke while one of the attorneys for the plaintiff was making his closing argument to the jury. The other attorney for the plaintiff was sitting in the witness stand. During his

argument the plaintiff's lawyer said: "They have insinuated throughout the trial that the plaintiff does not bear a good reputation, but they are unable to bring any witness from the county into the court to testify that his reputation is not good." Defendant's attorney, hearing this statement, rushed into the court room in his negligee attire and shouted: "I'll bet you \$100 that we can." Plaintiff's attorney, who was occupying the witness stand, called out, "I'll take that!" After the court had sufficiently reprimanded the offending lawyers for their misconduct, and everything had quieted down again, the attorney who was addressing the jury turned to them and said: "Gentlemen, I take it that when a lawyer gets to running around the court room without any clothing, he's mighty badly scared."

From Pathos to Pigs.—In *Chappell v. Ellis*, 123 N. C. 259, 68 Am. St. Rep. 822, 31 S. E. 709, involving the doctrine of "mental anguish," the court, in distinguishing a case pressed upon its attention, makes the following startling comparison: "The anguish of a mother bending over the body of her child, every lock of whose sunny hair is entwined with a heartstring, and kissing the cold lips that are closed forever, cannot come within the range of comparison with any mental suffering caused by the loss of a pig."

Perhaps the better course is, to make the rich pay, and let the deserving and impoverished poor, the indigent widow and helpless orphan go free. Not only do not ask, but do not consent to receive fees from them. The Lord is their treasurer, and will pay their debts abundantly.—David Paul Brown in *The Forum*.



Tennessee's Former Chief Justice

WILLIAM Dwight Beard, states the resolutions prepared by the committee of the Memphis bar, was born at Princeton, Kentucky, October 25, 1835, where he resided until fifteen years of age, when his parents removed to Lebanon, Tennessee. His father, the Reverend Richard Beard, was a minister of the Cumberland Presbyterian Church, at Lebanon, Tennessee, and at the head of the Theological Department of Cumberland University until his death.

The son graduated in the Academic Department, and then, 1860, in the Law Department of Cumberland University at that time the most noted law school of the country, and *alma mater* of many great lawyers. He breathed its atmosphere of letters and of law, and his writings of after years, especially his written reports of cases, were admirable for clearness, precision of language, literary style, and excellence.

After his graduation he began practice at Lexington, Missouri. He was married at Lexington on the 22d of

March, 1860, to Amelia Henderson who survives him.

The inspiration of Judge Beard's life and the mainspring of his noblest efforts were the many years of companionship with his bride of 1860.

In April of the same year he moved to Memphis, Tennessee, which became his home until his death, and began the practice there.

In May, 1862, he joined the Confederate Army, and was invited by General A. P. Stewart, who had been professor of mathematics at Cumberland University, to serve upon his staff, which he accepted, and served with General Stewart until the summer of 1863. He was then transferred to the Trans-Mississippi department, and was appointed by General Jo



HON. WILLIAM DWIGHT BEARD

Shelby to the office of assistant adjutant general on his staff, and served in that capacity until 1864. He was severely wounded at the battle of Westport, and disabled from service until a short time before the surrender, in 1865, when he was paroled with his command.

It is related of him that while serving on General Stewart's staff his yearning to see his wife, then in St. Louis, was so great that he obtained leave of absence, donned citizen's clothes, and joined his wife in St. Louis. While dining with her at the hotel, he was recognized by Colonel Crittenden, of the Federal Army, afterwards governor of Missouri, and a friend of his wife's family, who, greatly to his credit, warned him by note to leave at once, as his presence was known and that he would be arrested and tried as a spy. He lost no time in leaving.

The war being ended, he returned to Memphis and resumed the practice of law.

He was in partnership with Major W. P. Wilson, the firm being Wilson & Beard, and subsequently with Judge J. W. Clapp, as Clapp & Beard, and upon Judge Clapp's retirement, his son, Lucas Clapp, was a partner, and the firm became Beard & Clapp.

On the death of Honorable W. C. Folkes in 1890, Judge Beard was appointed to fill the vacancy upon the bench of the supreme court of Tennessee and served to the end of that term to the next general election.

In 1891 he was appointed chancellor of the chancery court of Memphis, Tennessee, and served upon this bench until 1894, when he was elected a justice of the supreme court of Tennessee. In 1902 he was re-elected, and then was made chief justice of the supreme court of Tennessee.

In 1904 he was a delegate to the Universal Congress of Lawyers and Jurists, and served in this convention at St. Louis.

He served as chief justice of Tennessee until his re-election to this bench in 1910, when he declined a re-election to the chief justiceship, and Judge Shields was elected to the place.

On the 7th of December, 1910, while the supreme court was holding its term at Nashville, Tennessee, after enjoying his breakfast and seeming to be in the best of health and spirits, he was stricken in his room and died suddenly,—supposedly from the bursting of a blood vessel of the head.

Judge Beard was one of the state's

ablest jurists. He was fearless in the discharge of his duty, and his reputation was more than state wide.

He was a most lovable man and was personally very popular all over the state, particularly with the bar, to whom his never failing courtesy and kindly consideration had very much endeared him.

In the death of Penoyer L. Sherman on January 4th, Chicago lost one of its oldest lawyers.

Mr. Sherman was born in Onondaga county, New York. He attended the famous Pompey Academy, and graduated from Hamilton College in the class of '51.

Mr. Sherman selected Chicago for the practice of his profession, says the *Inter-Ocean*, and arrived there in 1853. The city then had 50,000 people, was built on stilts and "no Bottom" signs were to be seen in the middle of streets, but it was growing rapidly and was so full of prospective settlers that everyone greeted everyone else with the query: "Hello, stranger! Where do you hail from?" Mr. Sherman entered the law office of Collins & Williams. The next year he was admitted to the Illinois bar and began practice.

As a lawyer he was an excellent example of what may be called the old-fashioned general practitioner, in contrast with the present age of specialists. He was a student and reader always, and his briefs were models of classical English. In middle life he served many years as master in chancery of the superior court, a position for which his judicial habit of mind eminently fitted him, and he will be remembered by the older Chicago lawyers as one of the best masters in the legal history of the city. It is said of him that his findings were almost invariably confirmed by the court and almost without exception stood the test of appeal. Mr. Sherman had offices for a generation in the Ashland block,—both the original one and the one built after the fire,—and many a Chicago lawyer has grateful memories of them, for Mr. Sherman was never too busy to thrash out a difficult case with a young lawyer and give him the benefit of his wide reading and study of the law.

Oklahoma's Blind Lawyer Senator.



LONG before his first term of office as Senator had expired, the entire country had learned two interesting things about Thomas Pryor Gore, the blind man sent by Oklahoma to the United States Senate. One was the marvelous amount of well-digested and well-marshaled information acquired during that sightless life; the other was that he possessed a courage and integrity that made him a valuable servant of the nation, even more than of his party or his state.

Born forty years ago, among the hills that divide the Tombigbee and the Mississippi rivers, he grew up among the creeks and pines.

"At the age of eight years," writes Mr. James Creelman in a biographical sketch of Senator Gore, published in volume 21, No. 5, of Pearson's Magazine, "the boy's left eye was blinded by an accidental blow from a stick. Three years later he was employed

as a page in the Mississippi senate, and boarded at the house of Senator J. Z. George, in Jackson. One day while playing with a crossbow, an arrow entered his right eye and destroyed his sight. As the wounded lad was carried home he stretched out his hands and moaned, 'Don't tell my mother. Please don't tell my mother.'"

"It would be harder to find a darker prospect in life than that which confronted the blind Mississippi boy. But in spite of his affliction young Gore managed to stand at the head of his class

in school and at the age of seventeen years entered the Normal school.

"The great power which he displayed as a debater brought him invitations to address farmer's picnics and political gatherings. He had to be led about among the crowds, but he developed a remarkable power over his audiences. While the multitudes roared at the sight of a blind man tragically protesting against existing conditions or tossing oratorical rainbow dust in the air, he studied the tones of their voices,

imagined the look in their faces, and planned how he might make them political prisoners of his tongue.

"In September, 1891, he went to the Law School at Cumberland University, Tennessee, and was one of the leading six students in a class of forty-two. After a two years' effort to earn a living as a lawyer in the place of his birth, Gore decided to go to Texas. The fact that he was completely blind, and did not know a single person in that great state, could not daunt him.

There he made

political speeches, but found no chance to practise law.

"The voice of Oklahoma called loudly to the blind man in Texas. With statehood there would be two new United States Senators. There was welcome and enterprise in the spirit of Oklahoma, and the prairie dwellers might follow even a blind leader. He thrilled at the thought of it. In July, 1901, the blind lawyer and his brother went to the new land, driving 45 miles in a wagon to Fort Sill. Failing to draw a land claim, the Gores moved out 4 miles to Lawton,



THOMAS PRYOR GORE.

an encampment on the open prairie. In 1902, Mr. Gore was elected to the territorial senate. On December 27th, 1900, he married Miss Nina Kay. Mrs. Gore took the place of his eyes. She devotedly accompanied him on his campaign tours.

"Gore fought hard for Oklahoma's admission to the Union. No man was more active in the agitation. But he would not go to the national capital.

"I won't go to Washington till I go with the right to speak and vote in the Senate," he said to his friends.

"The statehood bill was passed by Congress in 1906. It was a tragic thing to see a blind man harassed by poverty, fighting for the senatorship against his rich rivals, one a banker and the other a lawyer. His friends wanted him to abandon his ambition for a time, and run for Congress. 'It is the Senate or nothing,' he replied."

At last, on his thirty-seventh birthday, the legislature of Oklahoma fulfilled his life-long ambition by naming him as one of the Senators of the new state.

Successful Montana Lawyer Dies.

Honorable William Wirt Dixon died at Los Angeles, California, some weeks since, in the seventy-third year of his age.

Judge Dixon had practised in Iowa, Tennessee, Arkansas, Nevada, and finally in Montana. He was a member of both constitutional conventions of the state of Montana, was president of the Montana State Bar Association from 1887 to 1891, and was a representative in the Fifty-second Congress from Montana. In his law practice he was prominently connected with the most notable litigation in the state; he represented the proponents of the will in the famous Davis Will Case. For many years he was chief counsel for the interests represented by the late Marcus Daly. He was a member of the American Bar Association, and at the time of his retirement from the active practice of the law was considered the best lawyer in the state.

Kansas' Attorney General.

Honorable John S. Dawson is the man whom Kansas has selected for her new Attorney General. He has received thorough training in the line of his new position, having served for eight years under preceding at-



HON. JOHN S. DAWSON

torney generals of Kansas. As chief clerk, and later as special assistant, to Attorney General C. C. Coleman, of Kansas, Dawson resurrected, by hard digging, a great many defunct school districts which had died owing the state big sums of money. And in addition to bringing in those old boom-day loans he put an end to a practice that had arisen of selling off school lands far below their value. Promoted in 1907, after five years of hard work, to first assistant, he did much of the work in connection with the famous brewery ouster suits by which Kansas got rid of brewery control of law-breaking properties throughout the state. After some months of service as private secretary to Governor Stubbs, he was appointed attorney to the state board of railroad commissioners, a new position that has developed a special line of work. He will continue to hold that position until next spring, when he takes up his work as Attorney General.

It is twenty-six years since the Attorney General elect of Kansas left Scotland, his birthplace, and the Robert Gordon's College, at Aberdeen. On coming to Kansas he was for some time a student at Salina Normal University. After a mixture of law reading, school teaching, and newspaper work, he was admitted to the bar in 1898. Like others of the younger men in Kansas politics, he received his law degree at Washburn Law School, at the state capitol.

"The state officers are for the serving of the people," is generally believed to be one of Dawson's moving maxims. It is well illustrated in his appearance as an attorney of the Kansas Board of Railroad Commissioners before the Interstate Commerce Commission, in the present hearing on shipping rates. It is along this line that some of Mr. Dawson's best work may be expected in the future.

Jose M. Figueras-Chiques, a justice of the supreme court at San Juan, Porto Rico, died recently in that place. He was born in San Juan, January 30, 1851. He was educated in the University of Santiago de Galicia, Spain, and became a licentiate in civil and canonical law at Madrid in 1879. From then until 1892 he practised law in San Juan. From 1892 to 1895 he was connected with the Audencia territory, Santiago de Cuba, first as secretary and later as assistant prosecuting attorney, and in 1895 he became a judge of the First Instance at Mayaguez. He was a judge of the Audencia de lo Criminal at Mayaguez when he was appointed prosecuting attorney of the Audencia Mayaguez by Major General James H. Wilson. He then received a military appointment to the supreme court of Porto Rico, retaining the position under the provisional government until 1900, continuing under presidential appointment.

Cephas Brainerd, a New York attorney who was an authority on international law, died recently at his home in New York city. He had long been a prominent member of the New York bar, and held the chairmanship of the Bar Association committee on amendment of the law. For years he had been interested in reform movements and was especially active in prison reform work.

Martin W. Littleton, just elected to Congress, has quit the New York law

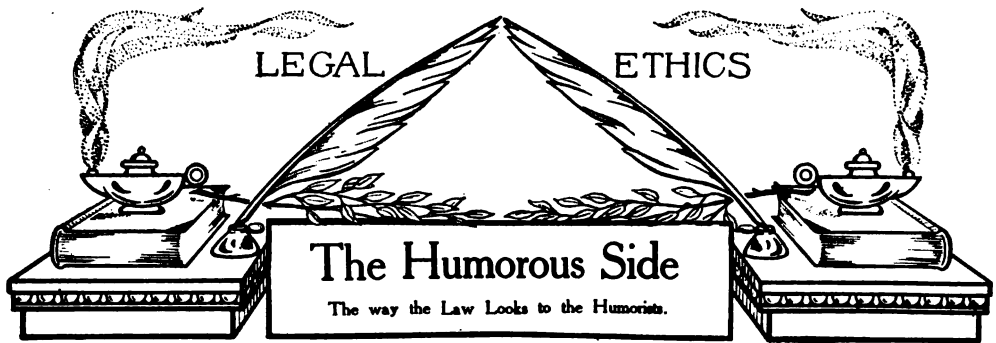
firm of O'Brien, Boardman, Platt, & Littleton. The firm is counsel for the United States Express Company and other carriers, as well as for other corporations.

"I feel the responsibilities I am to assume forbid my staying in the firm, in justice to the obligations of the firm to its clients. So I am getting out now instead of waiting till I go to Congress next March." Mr. Littleton is to urge the passage of a parcels post act in Congress. The Express companies have fought such an act.

We hear much of "special interest" legislators in these days, observes the St. Louis Republic, and it must in candor be admitted that specimens are all too numerous. It is inspiring, therefore, to come upon such an item as that which chronicled the withdrawal of Martin W. Littleton, Congressman elect, from his New York law firm, in order that he should be free from all "entangling alliances" in his work as a legislator.

It is obvious that this plan cannot be carried out in every case. The business man, elected to Congress, cannot sell out his business; the labor unionist cannot leave his union. The value of Mr. Littleton's act is not as a precedent for other men to follow; it is rather as an indication of the spirit which a man of exceptional personal force and power of utterance brings to the performance of a legislator's task at a time in the nation's history when there is a special need of clean hands and straight thinking in legislative halls.

Missourians who know their state's history will think of the day when Thomas H. Benton called together in St. Louis his client in the land-grant litigation, which was the most profitable branch of practice in his time, and told them that he was going to Washington as Senator, that as such he would have to pass on matters affecting their interests, and that he could therefore represent them no longer.



Wanted Particulars.—"Would you defend a crook, if you knew positively that he was guilty of the crime with which he was charged?"

"Well, it would depend," replied the lawyer. "What charge do you expect them to lodge against you?"—Record-Herald.

Where the Credit Lay.—Litigant—"Your fee is outrageous. Why, it's more than three fourths of what I recovered."

Lawyer—"I furnished the skill and the legal learning for your case."

Litigant—"But I furnished the case."

Lawyer—"Oh, anybody can fall down a coal hole."—Boston Transcript.

Won Out.—She—The lawyers got most of the estate.

He—Didn't the widow get anything?

She—Oh! yes, she got one of the lawyers.—Buffalo News.

In London.—The suffragette lady had flung the fish at the premier and winged an innocent bobby 30 feet away.

They brought her before the Bow street magistrate, who regarded her with a frosty eye.

"The evidence bears out the court's impression that you were fully prepared to commit this assault," said the judge.

"I had two fishes," replied the lady, "and one smelt."

"Is that a joke?" snapped the magistrate.

"I-I got it from Tit-Bits," stammered the lady.

"Thirty days for the assault and six months for the tit-bit!" roared the judge.

And they led the unhappy fish distributor to a dark and dismal cell.—Cleveland Plain Dealer.

It's a Ripper.—Here is another of those traditional English jokes, of the "good story" class, reverently scissored from the London Express:

Mr. Douglas Grand, who was the principal witness for the Crown at the remount trial at Ennis, tells a good story regarding the examination of one of the witnesses.

"Did you sell Major Studdert a horse?" asked the counsel.

"No, sorr," replied the witness.

"Did your father sell Major Studdert a horse?"

"No, sorr."

"Did any member of your family sell Major Studdert anything?"

"Yes, sorr, I did," replied the witness.

"And what did you sell Major Studdert?"

"I sold him a mare," replied the witness, to the chagrin of counsel and the delight of the court.

Should Be Run In.—When charged with being drunk and disorderly, and asked what he had to say for himself, the prisoner gazed pensively at the magistrate, smoothed down a remnant of gray hair, and said:

"Your Honor, man's inhumanity to man makes countless thousands mourn. I'm not as debased as Swift, as profligate as Byron, as dissipated as Poe, as debauched as—"

"That will do!" thundered the magistrate. "Ten days! And, officer, take a list of those names and run 'em in. They're as bad a lot as he is!"—London Mail.

Plucking Victory from the Jaws of Defeat—An eminent lawyer was once cross-examining a very clever woman, mother of the plaintiff in a breach of promise ac-

tion, and was completely worsted in the encounter of wits. At the close, however, he turned to the jury and exclaimed, "You saw, gentlemen, that even I was but a child in her hands. What must my client have been?" By this adroit stroke of advocacy he turned his failure into a success.—*London Mail*.

An Extenuating Circumstance.—"I pleads guilty ter stealin' dem melons, jedge," said the prisoner; "but I wants de mercy er de court." "On what grounds?" asked the judge. "On dese grounds," replied the prisoner. "I stole de melons, but de sheriff didn't give me a chance ter eat 'em!"—*Atlanta Constitution*.

A Charitable Bequest.—A sad and seedy individual gained admission to the offices of one of the city's best known legal firms, and at last somehow penetrated to the sanctum of the senior partner.

"Well," asked the lawyer, "what do you want?"

The visitor was nothing, if not frank. "Half a dollar," he said boldly.

The man's unusual manner caught the lawyer's curiosity.

"There you are," he said, handing out the money. "And now I should like to have you tell me how you came to fall so low in the world."

The visitor sighed. "All my youth," he explained, "I had counted on inheriting something from my uncle, but when he died he left all he had to an orphan asylum."

"A philanthropist," commented the lawyer. "What did his estate consist of?"

"Ten children," said the visitor—and vanished.—*New York Weekly*.

Useless Knowledge.—A colored man was brought before a police judge, charged with stealing chickens. He pleaded guilty and received sentence, when the judge asked how it was he managed to lift those chickens right under the window of the owner's house when there was a dog in the yard.

"Hit wouldn't be no use, judge," said the man, to try to 'splain dis thing to yo' all. Ef you was to try it you like as not

would get yer hide full of shot an' get no chickens, nuther. Ef yo' want to engage in any rascality, judge, yo' better stick to de bench, whar' yo' am familiar."—*The Oklahoma Law Journal*.

Taking No Chances.—"I have a remarkable history," began the lady who looked like a possible client.

"To tell or to sell?" inquired the lawyer cautiously.—*Kansas City Journal*.

A Slip of the Tongue.—A lawyer was questioning a woman who was on the witness stand, and she was going to say, "Indeed I do," with marked emphasis, in reply to one of the lawyer's questions. Her tongue tripped her up and even the sedate judge grinned when she said in a high-pitched, screeching voice:

"Indude I dee, sir!"

Crimsoning with confusion she said:

"You know very well that what I meant to say was Indo I deed, sir—er—er—you know what I mean."

"Indeed I do," said the lawyer.

"Yes, that's it, sir—indee I dude—er—I don't know what's the matter with my fool tongue to-day."

He Was Scared.—There used to be a sheriff in a Green Mountain county of Vermont who, for forty years, had driven his prisoners—murderers, moonshiners, thieves—through the woods in his buggy to the county jail, and yet who had never carried a revolver nor used a pair of handcuffs in his life. He had a strong hand, a brave heart, and a stutter.

"Weren't you ever afraid?" someone asked him one day.

"W-well, I'llow once I w-wuz t-tol'erable well skeert," he admitted slowly. "I h-heard S-Si P-Perkins, the b-barber, wuz g-gone d-daft an' wuz c-carvin' p-people up, an' I c-calc'lated it wuz my official d-dooty to g-go an' arrest him. So I w-went d-down to S-Si's shop, an' w-went in, an' S-Si c-come at me w-with a r-razor in each h-hand. An' then I 'llow I wuz t-tol'erable well skeert."

"What did you do?"

"W-w-well," said the old sheriff, spitting thoughtfully into the sand box beside the stove, "I wuz s-so s-skeert that I t-took 'em a-a-away from him."—Everybody's.

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For April The Nationalism and States' Rights Number. Prof. Herman L. Fairchild of the University of Rochester, has written on "Conservation and New Nationalism," a subject which he has recently lectured upon and given close study. Other articles on the so called "no-man's land" or border line between Federal and State Powers will appear in this number.

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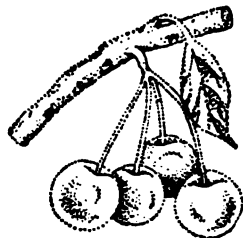
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in Homicide Cases***

By FRANK H. BOWLBY

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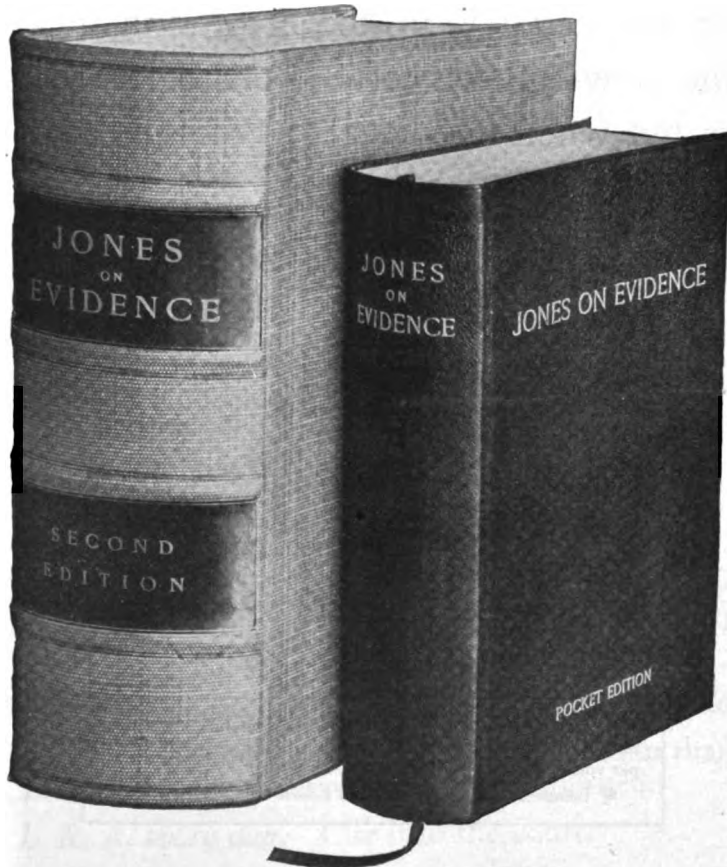
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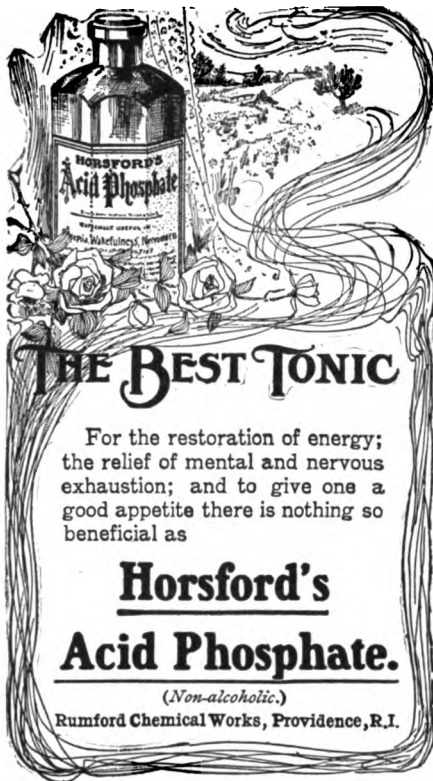
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Professor Cesare Lombroso, a Hebrew by descent, was born at Turin in 1836. He possessed great literary talent, but chose to devote himself to the profession of medicine. His independent researches led to his appointment as professor of psychiatry at Pavia, and later he became professor of forensic medicine at Turin. Until his death, on October 9th, 1909, he applied his splendid faculties in the scientific study of criminal man. His masterly and epoch-making books on "Criminal Man," "The Criminal Woman," "The Anarchists," "Crime as a Society Function," and other treatises disclose the great thinker and are pioneer labors in the comparatively new and undeveloped field of criminology.

There had been, earlier, a great awakening upon this subject among the eighteenth century philosophers in France,—Voltaire, Rosseau, Montesquieu, and the notable band of the Encyclopædists, whose doctrines were first clearly presented by Beccaria in his work on "Crimes and Punishments." These writers, however, developed no real science of criminology. It was reserved for Lombroso to formulate the terms of the new and stricter science in the light of the immense modern development of the biological sciences.

The criminal, he urges, acts abnormally because the functions performed by the brain and reflective nervous system are abnormal. Defective physical conditions manifest themselves in criminal acts. Hence, he believes that the delinquent must be treated as though afflicted with a serious illness, and temporarily retired from society for that purpose. He also contends that the criminal is characterized by many physical peculiarities, which betray him, and are common to the criminal type.

Lombroso's views have been much criticized, and to some extent corrected. That he has presented many vital truths is evident. He has shown that our prisons contain numerous inmates who should have been sent to a hospital for incurables. His efforts will form the basis of future labors. The germs of the many reforms now being urged in the domain of our criminal law may be found in the voluminous pages of the Turin professor.



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[Dr. Cesare Lombroso]
Father of the Modern School of
Criminology

English and American Administration of Justice

BY HARVEY F. REMINGTON,
of the Rochester (N. Y.) Bar



SO much has been said about the superiority of English criminal procedure of late, so many articles have been written lauding the celerity of procedure in English courts, so many lengthy editorials have been penned along this line, anent the Crippen trial, one might easily come to the conclusion, upon this discussion alone, that criminal trials in the United States were conducted solely in the interests of wealthy offenders; that it was largely the aim of criminal practitioners and prosecuting attorneys to secure delay for offenders of all classes, and that these delays were measured by the culprit's bank account or circle of friends.

It seems to me that in making a comparison between English and American procedure, sight has been lost of the fact that conditions in England are wholly different from those in this country. Great Britain and Ireland contain less square miles than the state of New Mexico, and less than one half of the area of Texas. The distance from the most remote hamlet in Great Britain to London is about 600 miles, being less than the distance from Boston to Pittsburg. This country was discovered in 1492, and the population of the original thirteen colonies at the time of the Revolution, less than one hundred and forty years

ago, was about 3,000,000. What is now Great Britain and Ireland, at the same time had thrice that number of inhabitants; now her population of 40,000,000 is doubled by our own. Her courts had been in existence for centuries prior to that time, and the changes in procedure from that day to this have not been many or varied.

If we grant that her administration of justice is more simple and expeditious than our own, she ought to excel us by reason of such a long experience.

We cannot expect perfection in all things, let alone the administration of justice in a country made up of the cosmopolitan population gathered here,—such as exists in no other country; and yet, notwithstanding all of these things, I assert that property rights, personal rights, and the rights of the state are as amply and fully protected under the Stars and Stripes as under any flag.

No country has such complex and varied problems to cope with as the United States. Conditions arising by reason of the heavy tide of immigration from all countries, including Gentiles, Jews, Greeks, Turks, Mohammedans, those of all religions and those with none, those coming to promulgate Socialistic doctrines, the perplexing Chinese and Japanese questions in the West, the abolition of slavery, the rights of the trusts, the organization and rise of federations of labor,—have raised perplexing questions which have demanded the atten-

tion, more or less, of the criminal arm of the law.

It seems to me that the Crippen Case has received undue prominence, and is there not the faintest suspicion that Cousin John thought that this might be an opportune time to impress upon Americans that there was no dallying with English justice, and that the case of a former American subject who had been guilty of a foul crime would be an excellent one in which to furnish an object lesson?

The limits of this article will not permit of the publishing of the array of statistics that could be presented of the work performed by the judges of our courts as compared with the work of the judges of English courts, and which establish the fact that our judges do far more work for a much less compensation than the English Judiciary. I should like to refer those curious to know to a well-tempered criticism of an article appearing in the *North American Review* of August, written by Judge Gemmill of Chicago, reviewing an article by Professor J. W. Garner in the *North American Review* of the previous January. This article cites many instances of severe punishment for trivial offenses, and the miscarriage of justice in English courts, for brutal crimes. I will cite but one instance quoted by Judge Gemmill, inasmuch as this relates to a brutal murder.

"On March 5, 1908, one Dyson brutally beat and murdered his daughter. He was tried, convicted, and sentenced to ten years of penal servitude. The Court of Appeals quashed the conviction because the trial judge misdirected the jury upon a technical point. There was no doubt of the prisoner's guilt, but he escaped all punishment."

Would not those who champion celerity in the conduct of criminal procedure prefer that a criminal should stand a second or even a third trial, rather than have him turned loose upon society through a technicality?

The procedure in English courts did not prevent Messrs. Gaynor and Greene from holding American officers at bay in the Dominion of Canada for many months, several years since.

The popular notion with reference to the administration of criminal justice in England has been that cases were conducted with dignity and decorum, and that it was impossible to railroad an offender to prison; but now one would think, from the comment concerning the Crippen trial, that the moment an offender committed an offense he would probably commence serving punishment for his crime within a few weeks after indictment.

Legal procedure suitable for a monarchy will not suit the needs of a republic. The first to resent what appears to be the autocratic powers of the English judge would be those who advocate such procedure; they desire to tinker with present methods, and introduce innovations which our fathers decided were not wise for liberty-loving Americans. Our forefathers laid down broad principles in adopting the Constitution, and, as Attorney General Wickersham pointed out recently in an after-dinner speech at the New York Bar Association at Syracuse, the tendency of Constitution builders of the present day is to so curb legislative bodies that they are practically automata. It seems to me that one of the reasons for the wonderful development and growth of this country has been the fact that under our Federal and State Constitutions our legislative bodies were given wide latitude in framing laws, and this discretion has, as a rule, been so wisely exercised as to develop, and not hamper, the progress of a state or the nation. It is true that abuses are sure to crop out under Constitutions so framed, but I submit that they are no greater than the evils which result from a too rigid restriction of legislative powers. I confidently assert that our laws keep pace with, and possibly are a little ahead of, public sentiment; in other words, we have what the public demands.

In a generation, under the guiding hands of those discerning the needs, and in accord with the will of the people, great reforms have been brought about in America in legal procedure. Nowhere has a poor man so good an opportunity to secure a vindication of his rights. Our appellate courts consider and pass upon trivial claims at the



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English Court of Appeals in Session.

Lord Justice Buckley, Lord Chief Justice Alverstone, Lord Justice Kennedy.

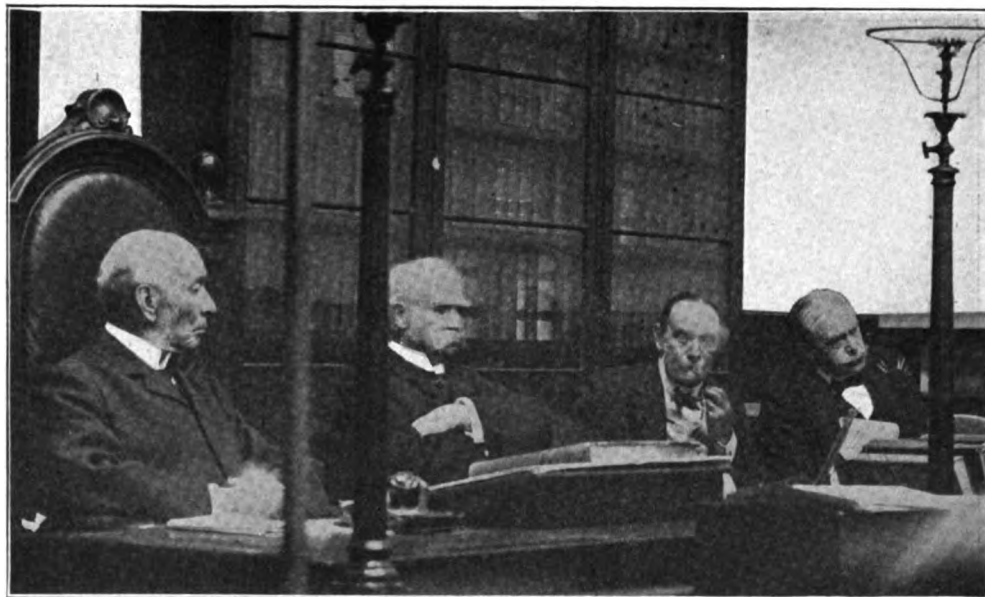
behest of litigants of very limited means, and a person without means can prosecute or defend an action as a poor person. A criminal can have counsel assigned to his defense in almost any jurisdiction of the United States; almost every practitioner performs work gratuitously and ungrudgingly for clients when called upon; chivalric defense of the rights of the oppressed, whether a retainer is in sight or not, is and will continue to be a characteristic of most lawyers.

It is our proud boast that we are all equal before the law, and we do not want these rights abridged. The people are entirely competent and can be depended upon to pass upon questions of reform in procedure as they arise from time to time. Do the advocates of the English methods think there are no cases of *Jarndyce vs. Jarndyce* still slumbering in chancery?

I have attended the sessions of the highest tribunals in many countries, and many court sessions in England, and

have never seen courts of justice, from highest to lowest, conducted with such decorum and dignity as we find in our American courts of record, and especially in those of the state of New York and the United States courts. For one thing, I have never known of an actress having been invited to sit beside the presiding judge, as in the Crippen Case, or tickets of admission issued to the favored who desired to see the exhibition. It is true that in important criminal trials the maudlin and curious will flock in large numbers, but that is true of society everywhere.

Under the English system the Lord Chief Justice of England presides in civil or criminal trials, with or without a jury. There may be good reason why this should be so, but here we would think it a little incongruous were Chief Justice White or Chief Judge Cullen to preside at a murder trial. With many of the English judges an effort to be facetious in trials at the expense of witnesses or counsel is noticeable, strongly



Photograph, Underwood & Underwood, N. Y.

THE CRIPPEN HEARING AT BOW STREET, LONDON.

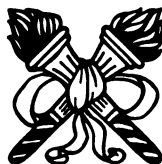
Sir Albert de Rutzer, the presiding magistrate, on the left, next to him Sir William Gilbert and Sir Melville Macnaughton.

reminding one of Mr. Justice Starling, who presided at the famous trial of *Bardell vs. Pickwick*.

A well-appointed court room and a court house furnished in good taste, and the presence of courteous attendants, aid materially in upholding the dignity of our courts. To one who has visited the court rooms in England, the vast superiority of the surroundings of American court rooms must strongly appeal. We find few court rooms in the United States that seem as cramped and stuffy as most of those in London. Many of them do not seem to be much larger than 20 x 20 feet, and are poorly ventilated, dark, and grimy. Contrast this with the court rooms known to the reader, found in the county seat of almost

any county,—especially in the older states.

No man lives who is wise enough to devise a perfect judicial system, and he must be a genius who will present a system which would work smoothly both in Montana and Massachusetts. The *personnel* of the Bench and the Bar is of far more importance than any system of procedure. The efforts President Taft is making to strengthen the United States courts will do more in the next decade to improve present conditions than the experiments the visionary would have us make in fashioning our procedure after that of England or some other country. We are living in an age that demands the best, and the solution of problems as they arise will be safely and sanely met at home.



Insanity as a Defense in Homicide Cases

BY FRANK H. BOWLBY

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At the annual banquet of the New York State Bar Association, held recently at Syracuse, a special committee on the commitment and discharge of the criminal insane proposed the enactment of a statute providing: "If, upon the trial of any person accused of any offense, it appears to the jury, upon the evidence, that such person did the act charged, but was at the time insane, so as not to be responsible for his actions, the jury shall return a special verdict, 'Guilty, but insane;' and thereupon the court shall sentence such person to confinement in a state asylum for the criminal insane for such term as he would have had to serve in prison but for the finding of insanity; and if, upon the expiration of such term, it shall appear to the court that such person is still insane, his confinement in such asylum shall continue during insanity; and, further, when such a verdict of 'Guilty, but insane,' is returned in a case where the penalty for the verdict of guilty against a sane person is death, such sentence for the insane person thus found guilty shall be for life; but in all cases the governor shall have the power of pardon, after such inquiry as he may see fit to institute upon the question whether it will be safe to the public to allow such a person to go at large."

The purpose of the proposed statute is to remedy and prevent sham pleas of insanity in homicide and other cases, which, at times, have been very prevalent.

The state of Washington, a short time ago, made an effort to accomplish the same object, and has proceeded much further than has New York. But when New York proceeds, let us hope that she will proceed less disastrously. Washington enacted a statute in 1909, providing: "It shall be no defense to a person charged with the commission of a crime, that at the time of its commission he was unable, by reason of his insanity, idiocy, or imbecility, to comprehend the nature and quality of the act committed, or to understand that it was wrong; or that he was afflicted with a morbid propensity to commit prohibited acts; nor shall any testimony or other proof thereof be admitted in evidence."¹ This statute went down in collision with the two constitutional principles which have been made a part of the

Constitutions of nearly, if not quite, every state in the United States, that "no person shall be deprived of life, liberty, or property without due process of law," and that "the right of trial by jury shall remain inviolate."

This enactment conflicted with the "without due process of law" principle on the theory that the sanity of the slayer at the time of the act goes to make up his guilt, as well as the physical commission of the act. If, at the time, he was insane to the extent that he could not comprehend the nature and quality of the act in question, how can it be said to be his act, and why is not a prohibition to make this defense a denial of "due process of law?" And it conflicted with "the right of trial by jury shall remain inviolate," because it was "inviolable" at the time the Constitution was enacted.²

New York, however, has not attempted as much, and apparently what is suggested is within constitutional limits. Under its proposed provision, the previous methods of prosecution, trial, and conviction are unchanged. The change is made in the disposition of the offender after a verdict of "guilty, but insane." The procedure to ascertain guilt or innocence, or sanity or insanity, will be unchanged. Probably the only criticism of the proposed law would be that, in view of the almost, if not quite, universal existence of the principle that sanity, at least, to the extent of being able to comprehend the nature of the act in question, is a necessary ingredient of crime, the prescribed verdict of "guilty, but insane," might be regarded as equivalent to "guilty, but innocent." But this would be a mere play on words; the intent is clear, and no one could be misled. This gives rise to an inquiry and speculation as to what now is the status of the criminal insane, and what would it be were the proposed New York law enacted.

Criminal responsibility generally.

Under existing statutes and rules it may be stated generally that a person who commits a crime acting under the impulse of mental disease is not criminally responsible therefor.³

² *State v. Strasburg* (Wash.) 110 Pac. 1020. This case is set forth, with the individual opinion of each judge printed, in an article on "Insanity, a Defense," in 3 *Lawyer & Banker*, 362.

³ *Hite v. Sims*, 94 Ind. 333; *Lilly v. People*, 148 Ill. 467, 36 N. E. 95; *State v. Mewherter*, 46 Iowa, 88; *Abbott v. Com.* 107 Ky. 624, 55 S. W. 196; *State v. Jones*, 50 N. H. 369, 9 Am. Rep. 242; *Walker v. People*, 88 N. Y. 86; *Giebel v. State*, 28 Tex. App. 151, 12 S. W. 591.

¹ Wash. Laws 1909, p. 891, § 7, Rem. & Bal. Code, § 2259.

A person of insane mind is not subject to punishment for his criminal acts,⁴ his insanity being deemed an excuse whenever it is the efficient cause of a criminal act.⁵ And this is true though the insanity was brought on by the vices of the party himself.⁶ Criminal acts from malice, and not from insanity, are punishable, though the mind of the person committing them was so affected as to avoid his acts in a civil case, as those of a lunatic.⁷ And mental disorders cannot be regarded as evidence of insanity which will confer immunity from punishment unless they are caused by, or result from, disease or lesion of the brain.⁸ And the unsoundness of mind must have been the cause of the crime,⁹ and it must have been so excessive as to overwhelm reason, conscience, and judgment.¹⁰ So, the unsoundness of mind which will excuse from criminal responsibility must be the result of mental disease, as distinguished from weakness or passion,¹¹ and the depression following physical illness, such as takes place ordinarily with men possessing fair average mental powers, cannot be regarded as insanity which will excuse crime;¹² nor is mere weakness of mind;¹³ nor does bad education or bad habits excuse crime;¹⁴ or the fact that the person is of a low order of intellect.¹⁵ And the fact that a man is deaf and dumb does not render him irresponsible for criminal acts;¹⁶ nor is crime excused because committed under the influence of fear and excitement,¹⁷ or jealousy.¹⁸ And mere frenzy or ungovernable passion, however furious, is not insanity which will excuse crime.¹⁹ And the rule is the same though it temporarily dethrones reason, or for the time being controls the will, where the inability to

control it arises from passion, and not from insanity.²⁰ When the conduct of a person is influenced by anger, malice, love of gain, or a heart bent on mischief, as distinguished from insanity produced by the visitation of God, he is responsible for his acts.²¹ And mere mental depravity is not insanity in a legal sense,²² neither is eccentricity, idiosyncrasy, or hypochondria, insanity which will excuse crime.²³ The insanity which will excuse crime must be not the mere impulse of passion, or idle frantic humor, but an absolute dispossession of the free natural agencies of the mind,²⁴ though it need not be furious and manifested alike on all subjects.²⁵

General mania and idiocy.

The rule was laid down in the early history of the common law, that to be exempt from criminal responsibility, one must have been at the time so deprived of his understanding and memory as not to know what he was doing more than an infant or wild beast;²⁶ but this rule has become obsolete with reference to idiocy or imbecility, and the rule of the capacity of a fourteen-year-old child has been expressly repudiated.²⁷ So, the presence or absence of a delusion has been stated to be the true test of the presence or absence of insanity, the absence of delusion being a characteristic of a sound mind.²⁸ But the rule that the presence or absence of delusion cannot be said to be the only legal test as a rule of law has been adopted in civil cases.²⁹ And delusion, though not a test, or not the sole test, is evidence of insanity.³⁰ Likewise, some of the cases have adopted the rule that the test of

⁴ *State v. Miller*, 7 Ohio N. P. 458.

⁵ *Lilly v. People*, 148 Ill. 467, 36 N. E. 95; *State v. Jones and State v. Miller*, supra.

⁶ *Cluck v. State*, 40 Ind. 263; *State v. Erb*, 74 Mo. 199.

⁷ *R. v. Tuth*, 1 Wheeler, C. C. 52, note.

⁸ *Gunter v. State*, 83 Ala. 96, 3 So. 600.

⁹ *United States v. Faulkner*, 35 Fed. 730; *Conway v. State*, 118 Ind. 482, 21 N. E. 285; *State v. Hockett*, 70 Iowa, 442, 30 N. W. 742.

¹⁰ *State v. Murray*, 11 Or. 413, 5 Pac. 55; *Graham v. State*, 102 Ga. 650, 29 S. E. 584; *Com. v. Wireback*, 190 Pa. 138, 70 Am. St. Rep. 625, 42 Atl. 542.

¹¹ *People v. Duffee*, 62 Mich. 487, 29 N. W. 109.

¹² *Goodwin v. State*, 96 Ind. 550.

¹³ *People v. Hurley*, 8 Cal. 390; *Conway v. State*, 118 Ind. 482, 21 N. E. 285; *Studdill v. State*, 7 Ga. 2; *Fitzpatrick v. State*, 81 Ky. 357; *Newcomb v. State*, 37 Miss. 385; *State v. Palmer*, 161 Mo. 152, 61 S. W. 651; *Anderson v. State*, 25 Neb. 550, 41 N. W. 357; *Nevling v. State*, 98 Pa. 323; *State v. Alexander*, 30 S. C. 74, 14 Am. St. Rep. 879, 8 S. E. 440; *Nelson v. State*, 43 Tex. Crim. Rep. 553, 67 S. W. 320.

¹⁴ *United States v. Cornell*, 2 Mason, 91, Fed. Cas. No. 14,868.

¹⁵ *Powell v. State*, 37 Tex. 348; *Fitzpatrick v. Com.* supra.

¹⁶ *R. v. Whitfield*, 3 Car. & K. 121.

¹⁷ *People v. Hurley*, supra; *Willis v. People*, 32 N. Y. 715.

¹⁸ *Aszman v. State*, 123 Ind. 347, 8 L.R.A. 33, 24 N. E. 123; *People v. Foy*, 138 N. Y. 664, 34 N. E. 396.

¹⁹ *Bolling v. State*, 54 Ark. 588, 16 S. W. 658; *Aszman v. State*, supra; *Fitzpatrick v. Com.* 81 Ky. 357; *People v. Finley*, 38 Mich. 482; *State v. Brooks*, 23 Mont. 146, 57 Pac. 1038; *People v. Foy*, supra; *Lynch v. Com.* 77 Pa. 205, 1 Am. Crim. Rep. 283; *United States v. Cornell*, 2 Mason, 91, Fed. Cas. No. 14,868.

²⁰ *Williams v. State*, 50 Ark. 517, 9 S. W. 5; *State v. Stickley*, 41 Iowa, 232; *People v. Mortimer*, 48 Mich. 39, 11 N. W. 776.

²¹ *Com. v. Farkin*, 2 Clark (Pa.) 208.

²² *Goodwin v. State*, 96 Ind. 550; *Com. v. Van Horn*, 188 Pa. 143, 41 Atl. 469.

²³ *Hawe v. State*, 11 Neb. 537, 38 Am. Rep. 375, 10 N. W. 452; *State v. Shippey*, 10 Minn. 223, Gil. 178, 88 Am. Dec. 70; *Sindram v. People*, 1 N. Y. Crim. Rep. 448; *Com. v. Cleary*, 148 Pa. 26, 23 Atl. 1110; *Johnson v. State*, 100 Tenn. 254, 45 S. W. 436; *United States v. Young*, 25 Fed. 710; *R. v. Vaughan*, 1 Cox, C. C. 80.

²⁴ *People v. Carnel*, 2 Edm. Sel. Cas. 200; *Hoover v. State*, 161 Ind. 348, 68 N. E. 591; *Com. v. Mosler*, 4 Pa. 264.

²⁵ *United States v. Faulkner*, 35 Fed. 730.

²⁶ *Arnold's Case*, 16 How. St. Tr. 764, Hargrave, St. Tr. 322.

²⁷ *Rodgers v. State* (Tex. Crim. Rep.) 28 S. W. 685. In *State v. Richards*, 39 Conn. 591, however, the court thought that imbeciles ought not to be held criminally accountable unless they have capacity equal to that of ordinary children of fourteen years of age, with the qualification that the comparison should be restricted to the matter of appreciating right and wrong, and the consequences of the act, and that the child taken as a standard should be one in humble life, with only ordinary training; but the court finally submitted the whole matter to the jury, requiring it to say whether the defendant had such knowledge of right and wrong, and such appreciation of the consequences and effects of his acts, as to be a proper subject for punishment.

²⁸ *Com. v. Meredith*, 17 Phila. 90; *Hadfield's Case*, 27 How. St. Tr. 1282.

²⁹ *Denson v. Beazley*, 34 Tex. 191; *Manhattan L. Ins. Co. v. Broughton*, 109 U. S. 121, 27 L. ed. 878, 3 Sup. Ct. Rep. 99.

³⁰ *Com. v. Meredith*, 14 W. N. C. 188.

criminal responsibility is the mental ability to discriminate between abstract right and wrong, criminal responsibility existing where there is sufficient mental capacity to know right from wrong.³¹ And one who has not such capacity is not a proper subject of punishment for criminal acts.³² This rule, too, though at one time well supported, has been generally, if not universally, superseded by other rules, notably the one immediately following.

The prevailing modern rule, which is fast becoming universal, is to test the capacity to distinguish between right and wrong in the concrete instead of the abstract, as having reference to the particular act in question, the test question being whether the accused was capable of distinguishing between right and wrong with respect to the particular act which he committed.³³ Under it insanity which will excuse a criminal act must amount to a derangement so great as to obliterate the sense of right and wrong as to the particular act done, at the time of its performance,³⁴ or as to render the party unconscious that in doing the particular act he was committing a crime.³⁵ The ability to distinguish between moral good and evil, as distinguished from legal good and evil, has been asserted as a test.³⁶ But the modern rule would seem to require an absence of knowledge that the act was wrong, either in

a moral or a legal sense, in order to relieve from criminal responsibility.³⁷

The rule has been quite extensively adopted and seems to be growing in favor, making the capacity to understand the nature, character, and consequences of the alleged criminal act a test of criminal responsibility therefor, holding that, to be effectual as a defense, insanity must be such as to render the accused unconscious of such nature, character, and consequences.³⁸ And a person would be criminally responsible if he had sufficient mind to be conscious of what he was doing,³⁹ but it is frequently regarded as necessary that the accused should not only be incapable of knowing the nature and character of the act, but also that he should be without capacity to distinguish between right and wrong with reference to it, the question being whether he had sufficient use of his reason to understand the nature and character of the act, and know that it was wrong for him to commit it.⁴⁰ As thus modified, the rule is nearly the same as the rule that responsibility depends upon the knowledge of right or wrong of the criminal act in question, and under it, one who is laboring under mental disease to such an extent that he does not know what he is doing, or that he is doing wrong, is not criminally responsible,⁴¹ but he is criminally responsible if he has reason and capacity sufficient to enable him to distinguish between right and wrong, and understand the nature of his acts, and his relation to the party injured,⁴² and sufficient mental power to apply that knowledge to his own acts.⁴³ Many of the cases put the question of knowledge of right and wrong, and that of capacity to know the nature of the act, in the alternative, holding the test of criminal responsibility to be whether the accused, at the time of committing the act in question, was laboring under such incapacity

³¹ *Beasley v. State*, 50 Ala. 149, 20 Am. Rep. 292; *Brinkley v. State*, 58 Ga. 296; *Hornish v. People*, 142 Ill. 620, 32 N. E. 677, 18 L.R.A. 237; *Conway v. State*, 118 Ind. 482, 21 N. E. 285; *Cunningham v. State*, 56 Miss. 269, 31 Am. Rep. 360; *State v. Redemeier*, 71 Mo. 173, 36 Am. Rep. 462; *Burgo v. State*, 26 Neb. 639, 42 N. W. 701; *Walker v. People*, 88 N. Y. 86, affirming 1 N. Y. Crim. Rep. 7; *Nevling v. Com.* 98 Pa. 323; *Giebel v. State*, 28 Tex. App. 151, 12 S. W. 591.

³² *United States v. Shufits*, 6 McLean, 122, Fed. Cas. No. 16,286; *Anderson v. State*, 42 Ga. 9; *Hays v. Com.* 17 Ky. L. Rep. 1147, 33 S. W. 1104; *Willis v. People*, 32 N. Y. 715; *Com. v. Winnemore*, 1 Brewst. (Pa.) 356.

³³ *Lide v. State*, 133 Ala. 43, 31 So. 953; *State v. Barthelman*, 120 Cal. 7, 52 Pac. 112; *Taylor v. State*, 105 Ga. 746, 31 S. E. 764; *State v. Mowry*, 37 Kan. 369, 15 Pac. 282; *Abbott v. Com.* 107 Ky. 624, 55 S. W. 196; *State v. Knight*, 95 Me. 467, 50 Atl. 276, 55 L.R.A. 373; *State v. Redemeier*, 71 Mo. 173, 36 Am. Rep. 462; *Knights v. State*, 58 Neb. 225, 76 Am. St. Rep. 78, 78 N. W. 508; *People v. Krist*, 168 N. Y. 19, 60 N. E. 1057; *State v. Spivey*, 132 N. C. 989, 43 S. E. 475; *Blackburn v. State*, 23 Ohio St. 146; *Maas v. Territory*, 10 Okla. 714, 63 Pac. 960, 53 L.R.A. 814; *Com. v. Lutz*, 10 Kulp, 234; *State v. McIntosh*, 39 S. C. 97, 17 S. E. 446; *Johnson v. State*, 100 Tenn. 254, 45 S. W. 436; *Evers v. State*, 31 Tex. Crim. Rep. 318, 37 Am. St. Rep. 811, 20 S. W. 744, 18 L.R.A. 421; *People v. Calton*, 5 Utah, 451, 16 Pac. 902; *Vance v. Com.* 2 Va. Cas. 132; *Eckert v. State*, 114 Wis. 160, 89 N. W. 826; *Youtsey v. United States*, 38 C. C. A. 562, 97 Fed. 937; *R. v. Layton*, 4 Cox, C. C. 149.

³⁴ *McAllister v. State*, 17 Ala. 434, 52 Am. Dec. 180; *Marceau v. Travelers' Ins. Co.* 101 Cal. 338, 35 Pac. 856, 36 Pac. 813; *Hornish v. People*, 142 Ill. 620, 32 N. E. 677, 18 L.R.A. 237; *State v. Wright*, 134 Mo. 404, 35 S. W. 1145; *People v. Montgomery*, 13 Abb. Pr. N. S. 207; *State v. Alexander*, 30 S. C. 74, 14 Am. St. Rep. 879, 8 S. E. 440; *Giebel v. State*, 28 Tex. App. 151, 12 S. W. 591; *R. v. Offord*, 5 Car. & P. 168.

³⁵ *McAllister v. State*, supra.

³⁶ *Kinloch's Case*, 25 How. St. Tr. 997.

³⁷ *McAllister v. State*, supra; *People v. Pico*, 62 Cal. 50; *Choice v. State*, 31 Ga. 424; *State v. Mowry*, 37 Kan. 369, 15 Pac. 282; *Com. v. Rogers*, 7 Met. 500, 41 Am. Dec. 458; *Willis v. People*, 32 N. Y. 715; *Blackburn v. State*, 23 Ohio St. 146; *Com. v. Sayres*, 12 Phila. 553; *State v. McIntosh*, 39 S. C. 97, 17 S. E. 446; *R. v. Townley*, 3 Fost. & F. 839.

³⁸ *State v. Gut*, 13 Minn. 343, Gil. 315; *Humphreys v. State*, 45 Ga. 190; *Hoover v. State*, 161 Ind. 348, 68 N. E. 591; *O'Brien v. People*, 36 N. Y. 276; *State v. Brandon*, 53 N. C. (8 Jones, L.) 463; *Revoir v. State*, 82 Wis. 295, 52 N. W. 84.

³⁹ *Brown v. Com.* 78 Pa. 122; *State v. Swift*, 57 Conn. 496, 18 Atl. 664; *Com. v. Jones*, 1 Leigh, 612; *R. v. Townley*, 3 Fost. & F. 839.

⁴⁰ *Guiteau's Case*, 10 Fed. 161; *State v. O'Neil*, 51 Kan. 651, 32 Pac. 287, 24 L.R.A. 555; *State v. Redemeier*, 71 Mo. 173, 36 Am. Rep. 462; *Mackin v. State*, 59 N. J. L. 495, 36 Atl. 1040; *Walker v. People*, 26 Hun, 67; *State v. Potts*, 100 N. C. 457, 6 S. E. 657; *Davis v. United States*, 165 U. S. 373, 41 L. ed. 750, 17 Sup. Ct. Rep. 360; *R. v. Doody*, 6 Cox, C. C. 463.

⁴¹ *Guiteau's Case*, supra; *State v. Zorn*, 22 Or. 591, 30 Pac. 317; *Com. v. Bezek*, 168 Pa. 603, 32 Atl. 109; *R. v. Arnold*, 16 How. St. Tr. 695.

⁴² *State v. West*, *Houst. Crim. Rep.* (Del.) 371; *State v. O'Neil*, supra; *Spencer v. State*, 69 Md. 28, 13 Atl. 809; *State v. Shippey*, 10 Minn. 223, Gil. 178, 88 Am. Dec. 70; *State v. Haywood*, 61 N. C. (Phill. L.) 376; *Loeffner v. State*, 10 Ohio St. 599; *Nevling v. Com.* 98 Pa. 323; *State v. Bundy*, 24 S. C. 439, 58 Am. Rep. 262; *Stuart v. State*, 1 Baxt. 178; *Leache v. State*, 22 Tex. App. 279, 58 Am. Rep. 638, 3 S. W. 539; *M'Naghten's Case*, 10 Clark & F. 200.

⁴³ *State v. Gut* and *State v. West*, supra.

as not to know the nature and quality of the act he was doing, or, if he did know, that he did not know he was doing wrong.⁴⁴

The right-and-wrong-with-reference-to-the-particular-act test seems to be growing in favor, and is generally satisfactory. On the retributive theory, we are justified in holding all persons who are conscious of the wrongfulness of a particular act which they commit, responsible for that act. And on the theories of prevention of crime and example to would-be criminals in the future, the argument for punishment of persons who, however disturbed may be their minds, are conscious of the difference between right and wrong as to the particular act, is still stronger. Those having charge of lunatics concede that they are subject to discipline, and the police system prevailing in lunatic asylums assumes this; and experts state that lunatics are, as a rule, open to the influence of fear of punishment. They would appear to differ only in degree in this respect from other men, though, of course, mitigation of guilt and diminished responsibility may be claimed for them on account of their infirmity. But as penal law can control their outbursts, the interests of society require that over them penal law should continue to assert its control.⁴⁵

Tests as to insanity as a defense in a criminal prosecution are to be applied with reference to the exact time of the commission of the offense,⁴⁶ though it is proper, in a prosecution of homicide by poison, to submit to the jury the question of sanity or insanity of the accused at the time when the poison was purchased, as well as at the time when it was administered.⁴⁷

Partial insanity or monomania.

Partial insanity is mental unsoundness, always existing, though but occasionally manifested.⁴⁸ And monomania is a derangement of the mental faculties confined to some particular idea or object of desire or aversion;⁴⁹ it is a perversion of understanding in regard to a single object, or a small number of objects.⁵⁰ And temporary insanity consists of occasional fits of madness.⁵¹ And recurrent

insanity is insanity returning from time to time.⁵² The fact that there is partial or temporary insanity does not confer criminal irresponsibility, where the party was not instigated by his madness to perpetrate the criminal act.⁵³ Temporary insanity is as fully recognized as a defense to crime as is permanent insanity.⁵⁴ But where an accused person is not shown to have been innocent, general evidence as to unsoundness upon any subject except that which is under investigation is incompetent.⁵⁵ Where partial insanity is relied upon as a defense, the crime charged must have been the product of the insane condition, and connected with it as effect with cause, and not the result of sane reasoning or natural motives of which the party was capable, notwithstanding his disorder.⁵⁶ It is an excuse for crime only when it deprives the party of his reason in regard to the criminal act in question.⁵⁷ To excuse crime, it must control the will, and make the commission of the act a duty of overruling necessity to the person committing it.⁵⁸ The test of responsibility is like that in other cases,—whether the accused had sufficient capacity at the time of committing the act to distinguish between right and wrong with reference to it.⁵⁹ And partial insanity will not excuse crime unless the accused did not have such knowledge,⁶⁰ or did not know the nature or quality of the criminal act,⁶¹ or did not have power sufficient to apply such knowledge to his own case.⁶² And to justify an acquittal, it must be proved that the act was committed during an attack of the disease, and the act itself is not evidence of such an attack.⁶³

⁴⁴ *Smith v. State*, 22 Tex. App. 316, 3 S. W. 684.

⁴⁵ *Bovard v. State*, 30 Miss. 600; *Com. v. Cresinger*, 193 Pa. 326, 44 Atl. 433; *State v. Harrison*, 36 W. Va. 729, 15 S. E. 982, 9 Am. Crim. Rep. 626, 18 L.R.A. 224.

⁴⁶ *People v. Ford*, 138 Cal. 140, 70 Pac. 1075.

⁴⁷ *Com. v. McCaulley*, 16 Phila. 502.

⁴⁸ *Guiteau's Case*, 10 Fed. 161; *Parsons v. State*, 81 Ala. 577, 60 Am. Rep. 193, 2 So. 854, 7 Am. Crim. Rep. 266; *Stevens v. State*, 31 Ind. 485, 99 Am. Dec. 634.

⁴⁹ *State v. Danby*, *Houst. Crim. Rep. (Del.)* 175; *Freeman v. People*, 4 Denio, 9, 47 Am. Dec. 216; *State v. Miller*, 7 Ohio N. P. 458.

⁵⁰ *Com. v. Mosler*, 4 Pa. 264; *Dejarnette v. Com.* 75 Va. 867.

⁵¹ *State v. Pratt*, *Houst. Crim. Rep. (Del.)* 249; *People v. Hurtado*, 63 Cal. 288; *State v. Nixon*, 32 Kan. 205, 4 Pac. 159, 5 Am. Crim. Rep. 307; *Grisom v. State*, 62 Miss. 167; *Giebel v. State*, 28 Tex. App. 151, 12 S. W. 591; *State v. Harrison*, 36 W. Va. 729, 15 S. E. 982, 9 Am. Crim. Rep. 626, 18 L.R.A. 224; *United States v. Ridgeway*, 31 Fed. 144; *Kinloch's Case*, 25 How. St. Tr. 891.

⁵² *State v. Lawrence*, 57 Me. 574; *Bovard v. State*, 30 Miss. 600; *State v. Huting*, 21 Mo. 464; *People v. Taylor*, 138 N. Y. 398, 34 N. E. 275; *Com. v. Freeth*, 5 Clark (Pa.) 455; *Dejarnette v. Com.* supra; *State v. Harrison*, supra; *United States v. Holmes*, 1 Cliff. 98, Fed. Cas. No. 15,382.

⁵³ *State v. Lawrence*, supra; *Com. v. Sayres*, 12 Phila. 553; *United States v. Holmes*, supra.

⁵⁴ *Com. v. Sayres*; *Dejarnette v. Com.* and *United States v. Holmes*, supra.

⁵⁵ *People v. Pine*, 2 Barb. 566; *Bellingham's Case*, 1 Collinson, Lunacy, 636.

⁴⁴ *United States v. Young*, 25 Fed. 710; *People v. Coffman*, 24 Cal. 230; *People v. Walter*, 1 Idaho, 386; *State v. Lawrence*, 57 Me. 574; *State v. Klinger*, 43 Mo. 127; *Anderson v. State*, 25 Neb. 550, 41 N. W. 357; *Freeman v. People*, 4 Denio, 9, 47 Am. Dec. 216; *Com. v. McCaulley*, 16 Phila. 502; *Clark v. State*, 8 Tex. App. 350; *Revoir v. State*, supra.

⁴⁵ See *State v. Coleman*, 27 La. Ann. 691; *State v. Pratt*, *Houst. Crim. Rep. (Del.)* 249; *Smith v. State*, 22 Tex. App. 317, 3 S. W. 684.

⁴⁶ *State v. Coleman*, supra; *People v. Clendennin*, 91 Cal. 35, 27 Pac. 418; *State v. Pratt and Smith v. State*, supra.

⁴⁷ *Laros v. Com.* 84 Pa. 200.

⁴⁸ *Black's Law Dict.* citing *Dew v. Clark*, 3 Ad-dams, Eccl. Rep. 79.

⁴⁹ *Owings's Case*, 1 Bland, Ch. 370, 17 Am. Dec. 311; *Cutler v. Zollinger*, 117 Mo. 92, 22 S. W. 895.

⁵⁰ *Re Gannon*, 2 Misc. 329, 21 N. Y. Supp. 960.

⁵¹ *R. v. Richards*, 1 Fost. & F. 87.

TO BE CONTINUED IN APRIL CASE AND COMMENT

The Humanity of the Law

BY B. A. RICH



“**L**AWS grind the poor, and rich men rule the law,” said Goldsmith in his “Traveller.” This is a sample of the jibes constantly aimed at the law by wits and cynics, by agitators and anarchists, and especially by those unfortunates who think, rightly or wrongly, that the law has done them an injustice. Great is the number of those who think they have been wronged by the law, and even of those who have suffered real injustice. But, after all, how much does this admission mean? Does it mean that our law is a kind of juggernaut of inhumanity and injustice, or only that, in spite of a dominant purpose to secure justice, it is subject in its operation to human imperfections?

As the law, in ideals and purpose, represents divine justice, those who contemplate these may say with Hooker that “her seat is the bosom of God and her voice the harmony of the world.” On the other hand, those who look at the miscarriages of justice and the grievous wrongs sometimes done in the name of the law because of its imperfections too often think of the law itself as a cruel monster of evil. But everywhere its purposes correspond to the moral development of the lawmakers, and its practical wisdom and justice depend upon the degree of their intelligence. The humanity of the law as it is actually administered is a well-nigh perfect index of the grade of civilization of the people.

It is increasingly characteristic of the law of to-day that it is aiming to protect the defenseless, to help the helpless, to preserve the rights and provide for the wants of those who cannot adequately care for themselves. By a few of many instances, even the least intelligent can see that the humanity of the law is steadily increasing, and that every year new steps are taken to prevent oppression, to abolish suffering, to pro-

tect life and health, to better the conditions of living, to provide intellectual and moral training, and in many ways to give to all increased privileges and higher opportunities for wholesome and happy life.

It may particularly emphasize the spirit of the time to call attention especially to the revolution that has been made during a single generation in the treatment of animals. Laws and societies to prevent cruelty to animals are found everywhere. The work of Henry Bergh in New York has been multiplied a thousandfold, until brutal teamsters and all who have to do with the care of animals have learned to fear the hand of the law. Not only beating, but overloading or otherwise abusing, animals, is made a statutory offense. Under Federal law and some state laws, as shown by the note in 44 L.R.A. 449, shipments of live stock are made subject to penal provisions if the stock is carried more than the specified number of hours without being unloaded for food, water, and rest. So there are statutes making it unlawful to indulge in such old-time sports as cock fighting, dog fighting, or fights between other animals. The laws against cruelty to animals, as shown in Halsbury's Laws of England, vol. 1, p. 419, also impose an obligation to kill an injured and suffering animal when it is cruel to keep it alive, and to kill it in such a way as to inflict the least possible pain and suffering. So the laws have taken cognizance of the subject of vivisection, and heated debates still go on respecting the extent to which they should go. These illustrate how far the law has come toward the high level of humane consideration, even for those animals which men in the past have used or abused, no matter how cruelly, without fear or thought of any power to interfere.

The special care of the law for those who cannot help themselves is emphasized also with especial force in its care for children. A parent whose negligent

failure to supply food or other necessities causes his child's death is guilty of manslaughter, or, if his failure was wilful, he is guilty of murder, as shown by the authorities in Wharton on Homicide (3d ed.) p. 686. And the same rule applies to the abandonment or exposure of the child. The parent may be also guilty of manslaughter by failing to provide medical attendance. On these questions the law has long been settled. Neglect to provide children with sufficient food or bedding for the requirements of health has also been made an offense. The tender regard of the law for the interests of youth is also shown in the laws, which are by some thought too strict, to prevent children from taking part not only in dangerous exhibitions or performances, but in those which are deemed detrimental to their moral welfare. Many are the statutes of the various states dealing with questions of this kind. So the education of children has become one of the most important and prolific subjects of legislation. Laws which deal with some phase of it have become legion. It is true that the welfare of the state itself is involved in this question, so that it is not solely a matter of humanity to the children; yet there is an increasing recognition of the duty of the state to the children themselves, and this element is the chief, if not the only, one in those statutes which deal with the care of the blind, deaf and dumb, defective, feeble-minded, or other classes of children who are not likely ever to become real factors in the body politic. Institutions great and small are multiplied everywhere for the support, care, and development of all these children.

Adults, as well as children, when helpless and needy, are treated by the law as wards of the state. It is too much to say that the state is yet doing its full duty toward all these, but it already does much. The maintenance of homes for the poor has long been a settled policy, and the sacredness of the obligation to them is emphasized by making the overseer of such a place criminally responsible for manslaughter, or murder in an extreme case, if he fails to provide necessary food and care for those in his

charge. It would make a long list to enumerate all the institutions and all the statutes that aim to provide for the various classes of those who are unable to care for themselves. Homes for old soldiers, homes for the feeble-minded, homes for epileptics, homes for the insane, homes for the blind, are everywhere provided and maintained by the law in the interest of humanity.

In dealing with offenders, the chief consideration has been protection to society, rather than humanity. But the interests and welfare of the offender are rapidly coming to be given a large place in the treatment of lawbreakers. Indeed, with juvenile offenders, the tendency now is to make them wards of the court, with proper oversight and training, and not to treat them as criminals at all. Even for adults the system of parole is an application of the same policy.

Laws for the protection of women have also increased manifold. The recognition of their lesser ability to defend themselves against attack, or to meet the strain of excessive toil, has led to numerous statutes to shield them from these dangers. Enactments for this purpose have not always been sustained by the courts, but they have been upheld in many cases.

Going beyond the case of the helpless and of the defective, beyond the case of children and of women, the law has in recent times begun to recognize that there is a great class of people competent to contract and to earn their own living, who are yet, by virtue of their situation, put at a disadvantage, and practically, if not theoretically, unable adequately to protect their own interests in some important matters. This is the class largely composed, indeed, of mature and able-bodied men who are so bound by the circumstances and conditions of their employment as to be more or less at the mercy of employers. In this vast field the law of modern times has undertaken the humane work of providing necessary restrictions and regulations of the terms and incidents of many employments. To make even an enumeration of the statutes on these subjects would fill pages. One illustration

may suffice. Take for instance the legislative restrictions of the hours of labor. Their constitutionality has been considered at length in notes in 65 L.R.A. 33 and 12 L.R.A.(N.S.) 1130, showing much divergence of view among the judges upon the questions involved, especially with respect to the reasonableness of the regulations in particular cases. Space will not permit any review of those statutes. But they furnish an overwhelming illustration of a great and enlarging field of the law that is pervaded with humane purposes.

Many other examples of the law's hu-

manity might be reviewed and while it is easy to enumerate its defects, imperfections, and miscarriages, and many critics see nothing else, yet a fair view of all that is being done and attempted for the interests of humanity incontestably shows that the law increasingly recognizes its obligation toward the helpless and the needy and all who cannot adequately care for themselves. The extent of this recognition and of the practical administration of this purpose of the law is limited only by the degree of the enlightenment and moral development of the people.

Inherent difficulties, peculiar to punitive justice, appear to me to be six: (1) public desire for vengeance when a wrong has been done, which the law is compelled to satisfy; (2) the close contact of criminal law and administration with politics; (3) the inherent unreliability of evidence in criminal causes; (4) the wide scope for discretion necessarily involved in the administration of punitive justice; (5) the intrinsic inadequacy of the chief deterrent upon which punitive justice must rely, and (6) the popular tendency to throw too great a burden upon criminal law—to attempt to do too much by means of it.—Prof. Roscoe Pound.

The Case Against Patrick

BY L. A. WILDER



WHERE the wine press is hard wrought, it yields a harsh wine that tastes of the grapestone," wrote Bacon in respect of judicature, adding that there is no worse torture than the torture of laws. That the wine press was hard wrought in one of America's most remarkable homicide cases is a conclusion that follows a perusal of the record in the case of the People of the State of New York against Albert T. Patrick. A new movement to secure Patrick's pardon is here made the occasion for a review of the case.

It will be remembered that the defendant was convicted of the murder of William M. Rice, upon the theory that the death was caused by chloroform administered by one Jones, the deceased's valet and secretary, at the suggestion of Patrick. The vital and most sharply contested point in the case was as to whether the death occurred as the result of a felonious act, and in the manner alleged; and it is purposed herein to consider that phase of the case.

Mr. Rice died on September 23, 1900, in his apartment in New York city. The only other person in the apartment at the time was Jones, who had been for some time Mr. Rice's secretary, and the only other member of the household. Shortly after the death occurred, the body was embalmed by the arterial process. This process consisted in making an incision into the brachial artery in the upper right arm, and injecting, without withdrawing the blood, a fluid of the "Falcon" brand. An autopsy was performed upon the body forty-three hours after the death occurred, by coroner's physicians, Donlin and Williams, and a chemist and toxicologist, Professor Witthaus. The report showed, among other things, that the left lung was "congested and oedematous—right lung same, and a small area of consolidate lung tissue about the size of a twenty-

five cent piece in lower lobe." The cause of death was not given.

Rice was a multi-millionaire, and after his death the defendant produced checks and assignments of money and securities purporting to have been made from Mr. Rice to himself, and also a will in which he was named as residuary legatee. There was considerable testimony tending to show that these were forgeries. At any rate, Jones and the defendant were arrested on October 4th, upon the charge of forgery. On that day Jones made a statement at police headquarters. Thereafter he made two more statements, each placing the brand of falsity upon the preceding one. Finally, during the following January or February, he made a fourth statement, or rather a confession, which, if true, made him thrice a liar. This confession was along the line of his subsequent testimony upon which the defendant was convicted. As said by Judge O'Brien in his dissenting opinion, when the case was in the court of appeals,¹ "Jones was evidently testifying under a promise of immunity from the public prosecutor, and although he denied that as a witness upon the stand, no fair man can doubt, from the circumstances, that such a promise was made." Indeed, when interrogated on the witness stand as to his conflicting stories, he answered that he was in trouble and wanted to get out of his difficulty.

He testified as to an elaborate scheme involving forgeries and precautions, by which the defendant sought to acquire possession of Mr. Rice's wealth, and into which he entered with the purpose of sharing the spoils with the defendant. He testified that some time before the death there was some talk between himself and Patrick as to chloroform; that the difficulty of procuring it in New York led to the suggestion that he (Jones) have his brother in Texas send him some; and that he did so, and, when he received it, delivered it to the defendant. Jones further testified that shortly

¹ 182 N. Y. 184, 74 N. E. 843.

before Mr. Rice's death his Texas attorney was expected to arrive, and that the fact that his coming might thwart their plans led them to take immediate action. He said that he met the defendant upon the street Sunday afternoon, and received from him the bottle of chloroform; that the defendant instructed him how to administer it; and that he followed the instructions. When he returned to the apartment after meeting Patrick, he had been gone about forty minutes, and he found Mr. Rice lying upon his back, as he had left him. He had thought that Mr. Rice was asleep, but could not swear but that he was dead. He saturated a sponge with the chloroform, put it in a cone made out of a towel, placed the cone over the mouth and nose of Mr. Rice, and left the room, returning about thirty minutes later. Such is a brief *resumé* of the testimony of Jones. His brother testified that he sent chloroform, and the delivery of a package of glass sent to Jones from Texas was shown by way-bills, delivery books, and testimony of express agents.

It does not appear that, in the minds of the physicians who performed the autopsy, or of others, there existed the idea that the death was, or might have been, caused by the administration of chloroform, until the suggestion came from the lips of Jones. In fact, all of the vital organs were removed from the body at the autopsy, and a transverse cut was made in each of the lungs, which were, if not casually, certainly not carefully examined, and put back for cremation with the mass of the body, and they were cremated. The other vital organs were retained for examination by chemists, and no conditions indicating the cause of death were thereby disclosed. Reference to this striking feature of the autopsy will later be made, but it is sufficient now to point out that it is by these three physicians that Jones was sought to be corroborated. This was the situation with which the district attorney's office was confronted: An autopsy had been performed; the lungs had been cremated; the other vital organs showed no indication of the cause of death; Jones then came forward with

the chloroform idea; and his story meant that the chloroform had been taken into the lungs.

The coroner's physicians then indulged in research and experiments; one of them making as many as 140 experiments upon birds and animals. The facts that these physicians were salaried officials, and that they received extra compensation—one over \$5,000, the other something less—for their efforts, the latter fact not being known to the jury when they found Patrick guilty, may be passed over without comment. The substance of their testimony and that of Dr. Witthaus may be broadly indicated as follows: The lungs were congested; the congestion was coextensive with the lungs; nothing but an irritant gas or vapor will cause such coextensive congestion; and chloroform is such an irritant.

The entire testimony of these three experts stands or falls with the theory that the congestion was coextensive, for Dr. Donlin himself testified that if the lungs had not been coextensively congested it would have been his opinion that the patient had died of heart failure from lobular pneumonia. So, it is seen that the question as to the existence of coextensive congestion constituted the keystone of the case. Professor Witthaus testified that the lungs were congested. Dr. Williams testified that the congestion was coextensive and intense, and that "the condition of the lungs struck me most forcibly." Dr. Donlin testified that the lungs were congested "all over," and that their condition was the only thing in the body recognized as the cause of death. Speaking of all of the vital organs, he said: "For the purposes of death, I say they were normal, with the exception of the lungs." Dr. Williams also testified that the other organs were normal. However forcibly they were impressed by the condition of the lungs, and notwithstanding such condition was the only thing recognized as the cause of death, the fact remains that the lungs were cast aside, and the normal organs were retained for examination. So, the vital point hinges upon the accuracy of the memories of the physicians as to the condition observed months before,

which did not seriously attract their attention or excite their suspicions at the time.

On cross-examination, Dr. Donlin, who had had charge of the autopsy, was asked whether he orally announced the result. He said that it was his custom to do so, and admitted that there might have been a number of reporters present. He testified that he did not remark, after the autopsy, that "the old man's time had come, and he died from old age, and that is all you can make of it." The defense produced a witness who was asked whether, in his presence and hearing, Dr. Donlin made the statement. He was not permitted to answer, the court saying that the foundation had not been properly laid for the introduction of such testimony. The idea seemed to be that in interrogating Dr. Donlin the defendant's counsel did not specify the person to whom the remark was made, although it was claimed to have been made to several persons. The court also refused to permit Dr. Donlin to be recalled. This evidence was of the most important character, and especially so in view of the circumstances attending the autopsy, to which reference has been made, and it was excluded by a ruling that scarcely attains to the questionable dignity of being based upon a technicality. Judge O'Brien says that if such a ruling were made in a police court, on a trial for sheep stealing, he is not sure that any appellate court would ever think of sustaining it. Surely here is a sharp wine that tastes of the grape-stone.

Other phases of the case require comment, not so much because of what was disclosed at the trial as because of light thrown upon the case by disinterested men of science, or, rather, men who have become interested solely through science,—who, after research and experiments undertaken from no mercenary motives, are practically unanimous in declaring that there was a grave error in respect of the expert testimony, and who, because of this, are movers in the undertaking to secure Patrick's pardon.

The defense, without great success, sought to elicit testimony to show the

impossibility of anæsthetizing a sleeping person without awakening him. Subsequent investigation of this question by the President of the Medico-Legal Society, has led him to the conclusion that this is impossible. He says: "There is not an unprejudiced medical mind in the world who would believe that if a towel, made into a cone, containing a sponge saturated with chloroform, was placed over the face of a living man who was asleep, that death would ensue if he was left alone for thirty minutes. The first struggle that the man made would dislodge and throw off the towel." Numerous experiments and declarations by eminent physicians are cited in substantiation of this conclusion.⁸

A feature of the case to which too little importance seems to have attached at the trial has taken a position of great importance in the light of subsequent investigation. This concerns the effect of embalming fluid upon the lungs. It has already been seen that all of the expert testimony was based upon the theory that the congestion was coextensive. It was also given and accepted upon the assumption that the embalming fluid did not enter the lungs. Dr. Donlin testified that it could not enter the lungs when injected into the brachial artery, although he admitted that he had investigated no authorities on the question. Prof. Withaus said that the fluid would have no effect upon the lungs, that it would affect the lungs less than other parts of the body, that it would bleach the tissues, and that it would affect the lungs some.

A committee of the highest authorities on embalming, in the country, have investigated this question, and they state that embalming fluid can be injected into the lungs, before *rigor mortis*, through the brachial artery, where the blood is not removed.⁹ A committee of the Med-

⁸ 24 Medico-Legal Journal, p. 32.

⁹ See 28 Medico-Legal Journal, p. 127. See also 25 Medico-Legal Journal opposite p. 128, where it is shown that this same conclusion has been reached by the following eminent English surgeons and criminologists: Joseph Bell, F. R. C. S.; John Chiene, F. R. C. S.; William Turner, K. C. B., M. D., F. R. C. S.; Henry D. Littlejohn, M. D.; and Sir A. Conan Doyle, M. D.

ico-Legal Society, after considering the evidence in the case, and in response to questions propounded to them by the society, reported⁴ that the effect of embalming fluid of the "Falcon" brand, injected into the lungs two hours after death and before *rigor mortis*, would be to produce a condition "so like true congestion that a microscopical or bacteriologist examination would be required to distinguish between them." It is important in this connection to observe that Dr. Donlin, who performed the autopsy, was not permitted by the court to testify as to whether he used a microscope. The committee further say: "No reliance could be placed upon the conclusion formed or opinion expressed by a witness respecting the cause of death, as shown in the lungs, to be from chloroform or any other cause, without taking into consideration the fact of the body having been embalmed." Further: "We have no reason for changing the certificate of death as issued by Dr. Curry, and upon which the coroner permitted the cremation of Mr. Rice's body." It remains to be noted that Dr. Williams testified that the presence of chloroform was not determinable from the blood, because of the presence of embalming fluid.

There is much more, the consideration of which must be forborne because of the limitations of space. And yet it is thought that enough has been said to show that the wine press was hard wrought, apart from all knowledge imparted by those who have investigated the case subsequently to the trial. Certainly, in the light of such investigations the propriety of the conviction is a matter of serious doubt. Too much stress cannot be placed upon the varying stories recanted by Jones. And Patrick was convicted upon the testimony of such a man, corroborated—by what? Testimony of medical experts that nothing but an irritant gas or vapor will cause a congestion coextensive with the

lungs, and that chloroform is such an irritant. In their capacity as experts they were here reasoning from effect to cause.⁵ And what was the proof of the effect? Testimony of the physicians in their capacity as witnesses, who allowed the lungs to be cremated, and who retained the normal organs for examination, that the lungs were coextensively congested, and that this was the only condition recognized as the cause of death. And above all, the entire case of the experts was based upon the assumption that the embalming fluid did not enter the lungs, and this assumption is diametrically opposed to the consensus of opinion of many of the foremost physicians and embalmers of the world. To say now that there seems to be little evidence besides that of Jones, showing that death was due to other than natural causes, is not to cast reflections upon the experts, except in so far as such a statement entails the conclusion that they were mistaken. Their conclusions were circumscribed by the limitations of their knowledge, and it is by the exhaustive investigations of men of wider experience, and, it may be, more profound learning, that the apparent weakness of the case is disclosed.

Here is one of the many cases that

⁵ "In applying circumstantial evidence which does not go directly to the fact in issue, but to the facts from which the fact in issue is to be inferred, the jury have two duties to perform: First, by a rigid scrutiny of the evidence to ascertain the truth of the fact to which the evidence goes; and thence to infer the truth of the fact in issue. This inference depends upon experience. When we have ascertained by experience that one act is uniformly or generally the cause of another, from proof of the cause we infer the effect, or from proof of the effect we infer the cause. . . . Now, when this experience is of such a nature that it may be presumed to be within the common experience of all men of common education moving in the ordinary walks of life, there is no room for the evidence of opinion; it is for the jury to draw the inference. It is not because a man has a reputation for superior sagacity and judgment and power of reasoning, that his opinion is admissible. . . . But it is because a man's professional pursuits, his peculiar skill and knowledge in some department of science, not common to men in general, enable him to draw an inference where men of common experience . . . would be left in doubt." New England Glass Co. v. Lovell, 7 Cush. 321.

⁴ See 24 Medico-Legal Journal, pp. 1, 4. The following is the personnel of the committee: A. P. Grinnell, M. D., New York; Prof. H. S. Eckels, Philadelphia; Hon. W. H. Francis, Newark; Justice Herold, M. D., New York; James Moran, M. D., New York; Valdemar Sillo, M. D., New York.

go to justify the agitation for reform in the manner of taking advantage, in courts of justice, of the superior knowledge of scientists and other specialists. It has been frequently suggested that professional experts be excluded from the stand, and that there be appointed a board of experts, paid by the state, and chosen from among the most eminent specialists, whose duty it would be to hear the evidence touching scientific questions, and hand down its opinion, to be taken *ex cathedra* by the jury. That this would eliminate the unavoidable bias that attends an enlistment upon one side of a case is truly said by the advocates of this view. But the objection is interposed that such a course would constitute an invalid encroachment upon the prerogatives of the jury, in that it is exclusively the function of the jury to determine disputed matters of fact.

There is no magic in the words "witness" and "jury." An expert as an expert does draw conclusions from the evidence, although he is permitted to do so only where the question involved requires special knowledge not possessed by men of average intelligence.⁶ He does not the less perform what has been a duty of the jury since the dicasteries of Pericles, because he does not sit in the jury box; nor is he the more a witness because he does occupy the witness stand. His province is in fact to weigh evidence.

It is said that there is no such encroachment now because the jury are at liberty to disregard the opinions of the experts, and draw their own conclusions by reference, among other things, to the processes by which the experts arrived at their opinions. This is a perversity of reasoning. It means merely that the ex-

perts shall, to use the vernacular, be permitted to get away with it if they can, but that interference with the functions of the jury is obviated by the reservation to them of the right to weigh the evidence, their supposed incompetency to deal with which rendered the expert opinions admissible in the first instance.

One who sojourns in the law for long becomes so steeped in precedent that he has an antipathy for anything that bears the semblance of innovation. A due regard for precedent is good so long as the precedent is good. The conceded demerits of expert testimony deserve no championship. So, argument is given the appearance of a defense of the jury system. The jury are to determine the facts, and no interference with them shall be tolerated, it is said. The integrity of the jury system requires that, if advantage is to be taken of superior scientific knowledge, it shall be offered upon a partisan basis, in order that there shall be reserved to the jury the right to disbelieve and disregard it, upon the ultimate ground that it was offered upon that basis. And there is no invalid interference with the functions of the jury, so long as they have the right to form a disbelief in respect of that which they cannot comprehend. Such is the logic of the present situation.

The gradual process by which this evil has crept into the law accounts for the reluctance to eradicate it. "Whereas new things piece not so well," says Bacon, concerning innovations, "but though they help with their utility, yet they trouble with their inconformity. Besides, they are like strangers; more admired and less favored. All this is true, if time stood still; which contrariwise moveth so round, that a froward retention of custom is as turbulent a thing as innovation; and they that reverence too much old times are but a scorn to the new." It is but adding one voice to the clamor of a multitude, to express the hope that the near future will work a reform, to the end that it shall not be said that the Goddess of Justice is a Titania blinded by the magic liquid of slow evolution, and unable to see the grotesque shapes of those whom she caresses.

⁶ "It is not sufficient to warrant the introduction of expert evidence, that the witness may know more of the subject of inquiry and may better comprehend and appreciate it than the jury; but to warrant its introduction, the subject of inquiry must be one relating to some trade, profession, science, or art in which persons instructed therein by study or experience may be supposed to have more skill and knowledge than jurors of average intelligence may be presumed generally to have." *Ferguson v. Hubbell*, 97 N. Y. 513, 49 Am. Rep. 544. See also note 5, *supra*.

The Unwritten Law

BY A. M. HARVEY

of the Topeka (Kansas) Bar



THERE is a class of unwritten law which does not and cannot become written law, because it approaches so near the danger line that man dare not recognize it to the extent of publishing it and declaring it as a part of the positive law.

It is the unwritten law of the sea that a captain must go down with his ship. Men dare not write it into the contract, and nations dare not incorporate it in their navy or marine regulations; yet the sturdy tyrants of the sea know the law, and believe that to obey it betters their service; and there are few instances of its being disregarded.

It is the unwritten law of the army and navy that an officer shall not seek cover, or at least shall not show apprehension of danger to his person, in time of battle and in the presence of enlisted men or common sailors. In the Franco-Prussian war, nearly four thousand officers of the German army were killed, and the great majority of them gave up their lives because they believed in this law of conduct. In obedience to this law, Farragut bound himself to the mast, Lee rode to the head of his charging column at the bloody angle, and Lawton walked coolly in front of the line and was shot in the presence of his men.

We do not find this law in the army and navy regulations, and never shall, but our officers respect it and obey it.

The law of the right of revolution has been much talked about and much written about. Every intelligent citizen believes that he has the right, under certain conditions, to oppose the established government of his own land, and join in an effort to establish another in its place. Just prior to and during our Civil War there was much discussion in this country, by learned men on either side, of the right of revolution, and the "higher power" and the "greater law"

were appealed to with equal earnestness by Sumner on one side and Jefferson Davis on the other. However, their discussion has left this law as it has ever been,—undefined and unrecognized by courts and legislatures, but still existing as the only law that hangs the sword of warning and danger over those in authority.

The law justifying one person in the killing of another has required the serious consideration of every country. Every criminal code provides certain punishments for homicide, and many of them graduate the punishment with minute particularity, according to the circumstances of the killing, so that any one of six crimes may be involved in a single tragedy. Such codes also attempt to define what killing is justifiable and what is excusable, and, with their interpretation by the courts, attempt to describe the only conditions under which one human being can kill another and not be guilty of crime. Criminal codes have differed very materially in provisions of this kind. We have been unable to find a criminal code that has gone as far in attempting to describe the different situations that would constitute justifiable or excusable homicide as the Hebrew code. In fact, the Hebrew code almost stands alone in its recognition of man's desire to kill and his right to have that desire, and that climax of all satisfactions which comes to him who, under great provocation, slays another. It is not at all strange that in this branch there should be an extended code of unwritten as written law,—unwritten now and always to be unwritten, for the reason that the recognition given by its embodiment in the statutes would be taken as a license by dishonest men, and would result in harm rather than good. It is an unwritten law among the officers of the army that if a subordinate officer kills a superior officer because that officer has publicly degraded him by striking him, or by other action equally humiliating, then

the court-martial will not convict. During the Civil War, at Louisville, Kentucky, General Nelson said to General Davis, "How many men have you?" General Davis replied, "About"—giving an approximate number. Nelson said, "You an army officer and say 'about'! Why don't you *know* how many men you have?" And with that he struck Davis in the face with his glove. Davis shot and killed him, and the court-martial acquitted Davis.

The most common illustration of the unwritten law of homicide is where a person kills another, honestly and in good faith believing that that person has wilfully and deliberately imposed upon and degraded, either the man himself or some member of his family who was otherwise innocent and virtuous. In such a case a jury will not convict him of murder. The application of this law is so common that there is found much discussion of it in newspapers and among men generally. Criticism of juries for acquittals in cases of this kind is frequently heard among men whose conception of the law is such that they do not understand it to be the duty of a jury to consider any rule of action except that found in the statute books. One or two illustrations taken from the records of the courts of our state might not be out of place.

A certain man resided in one of our cities of about three thousand population. His family consisted of himself, his wife, and two daughters. The younger daughter was the pet of the family and the pride of her father. She married a well-to-do business man whose habits of life made him give more thought and consideration to his business than to his family. The young woman was musical, and with the consent of her husband she associated freely with other musicians, and attended musical entertainments with her acquaintances, while her husband devoted himself to money making. She went to a neighboring town to attend a musical festival, and, before she returned home, scandalous talk was there giving a detailed account of certain unseemly conduct on her part. Her husband, who was too busy to give the matter much

attention, simply informed her father that she could not return to his home, and so she went to her father. The young man who was associated with her in the scandalous conduct came to the hotel of their town, and took up his abode there, and talked freely to different persons about what he had done, and, among other things, boasted that he would have a talk with the young woman's father, and that he would take care of her. The father sent him word to stay away, and at the same time armed himself with a revolver. The next day, as the father was coming down the main street of the city, he met this young man, who started to approach him with a self-confident, almost insolent, air. The old man struck him over the head with a heavy cane, and then, producing his revolver, shot him dead. No weapon of any kind was found on the dead man's body, and there was no evidence whatever of an attack being made by him, or of any of the circumstances that might establish justifiable or excusable homicide. The father was indicted, and the case came on for trial. His attorneys planned that they would argue to the jury that he was not responsible for his action because of temporary insanity, but the old man was hard-headed, and he insisted upon taking the stand, and there he told the jury how much he regretted the killing, but at the same time he said that he never was more responsible in his life, and that he knew perfectly well what he was doing, and, more than that, if that part of his life could be lived over again, he would not make his conduct different, nor hesitate to kill the man. The story of the provocation and this story of the killing went to the jury, under the usual instructions of the court. After short deliberation the jury returned a verdict of "not guilty."

Another recent case was one wherein a young man of promise and of high ideals had the misfortune to have a brutal father. Certain brutal and inhuman conduct of his father toward his younger sister was related to the boy, and he deliberately walked into another room where his father was, and killed him. None of the circumstances of justification or excuse as laid down in the stat-

utes were present. All of the facts were presented to the jury, and the jury was instructed on all of the degrees of murder and manslaughter. After deliberation a verdict was returned, finding the boy guilty of the lowest degree of manslaughter. The court, being impressed with the same consideration as the jury, paroled the defendant, so that he did not have to spend a day in prison on account of the killing, and the court's action in this matter was approved by our supreme court.

Much has been written and much discussion has been had upon the failure of the jury to acquit on the urging of the unwritten law in the Thaw case. The facts did not bring the case within the law that moves juries to acquit the killer. Thaw was dishonest and licentious, and himself indifferent to the virtue of his wife. The able lawyer conducting the defense had presented evidence making an unqualified verdict of guilty impossible, and then, to avoid a verdict of not guilty on the ground of insanity, he "pulled for the shore," and made a gallant effort to secure a general verdict of not guilty. He should not be censured for his zeal; neither should the jury be especially praised for detecting the fallacy of his argument.

Court records are full of instances of acquittal of persons charged with murder, where no positive law can be found that would support the verdict. If we are right in our conclusions that the positive law is a child of the unwritten law, and that law is something to be discovered and administered, instead of something to be made and administered, then we may well withhold our criticism of juries in cases of this kind.

When we say that it is the province of the jury to pass upon the facts of a case, we have not told the whole truth. If this were true, then only special questions would be submitted to a jury, and the general verdict would not be required. We often hear the court instruct

the jury that, to determine the weight of the evidence, the jurors may take into consideration their knowledge of similar transactions common to the generality of mankind. Requiring a general verdict based on the law as given by the court and the testimony as learned from the witnesses, in actual practice, requires the jurors to interpret and apply the law as given by the court in harmony with that knowledge of the law common to the generality of mankind. Our statutory provision making the jury the judge of the law as well as the facts in libel cases is a recognition of this function of a jury, which is exercised in a greater or less degree in every case when a general verdict is rendered.

If the rendering of a verdict of guilty in a given case would shock the moral sense of justice in the minds of the jurors, then we ought not to expect or demand a verdict of guilty. Emerson has said: "Things refuse to be mismanaged long. Though no checks to a new evil appear, the checks exist and will appear. If the government is cruel, the governor's life is not safe. If you tax too high, the revenue will yield nothing. If you make the criminal code sanguinary, juries will not convict."

In conclusion, it may be suggested that if one would seek to establish a written law, he should first examine the unwritten law upon which it must rest, and, if this does not approach his ideal, he must exert his power upon the conditions that necessarily bring about the law. If he can abolish poverty, oppression, and hard conditions on the one hand, and ignorance and mental deformity on the other, then he may abolish the laws that they called into existence, and other and better laws will spring up in their stead. This is the true solution of the reformation of the law.—*From an Address delivered before the Kansas State Bar Association, January 12, 1911.*

Criminal Slang

BY JOSEPH M. SULLIVAN, LL.B.,

of the Boston (Mass.) Bar



WHAT is slang? Slang, briefly defined, is low, vulgar, and unauthorized language; a popular but unauthorized word, phrase, or mode of expression; low, popular cant; also the jargon of some particular calling or class in society; as the slang of the theater, of colleges, sailors, gypsies, thieves, and various other types that compose the dregs and cast-offs of society. The "patter" of the "Bowery tough," "Cockney footpad," or "Paris gamin" is a subject full of vital human interest to the student of philology not averse to researches in the labyrinths of that part of human society known as the "underworld."

Slang had its birth in "criminality." Take, for example, the speech of gypsies and Magyars. The language of these vagabond races was intelligible only to the immediate members of each individual tribe; as a class they were decidedly criminal, and from their argot sprang ancient criminal slang. Their slang language is the same to-day as it was in the fourteenth century, and is still unscathed by the mutation of time. The criminal classes of India use warning cries, and employ cipher marks to tell subsequent prowlers of the conditions of the neighborhood; and in this respect they are similar to our "yeggmen" of the present day in America, a class whose activities have baffled the keenest minds of the United States government, and in the suppression of whom as a class the Postoffice inspectors have ignominiously failed.

Modern criminal slang has for its distinguishing features expressiveness and applicability. It has taken our modern civilization to make the present-day criminal and evolve his peculiar dialect. Many of the slang expressions which are in current use among the American criminals of the current day will, be-

cause they convey so much truth in a "pat" form, eventually find a place in all the dictionaries. The peculiar language used by the underworld is, to my mind, due to their perverted but acute mentality.

Just as the "yeggmen" finds a burglar's kit and dynamite an essential preparation for blowing open safes, so the criminal finds his own slang a most convenient and useful mode of expression because of its brevity and its usefulness in conveying so many ideas in a very few words. To-day, on all sides, we hear the slang expression of the deft, furtive pickpocket or "dips," the vocabulary of the "yegg" or "boosters," the confidence man, the counterfeiter, and of every class and kind of criminal which is to-day operating in America.

Slang is too big, too vital, too much a part of language (and a living part), for us to ignore it,—words scribbled in the margin of life's page. Some of these survive and creep into the text. Its origins have always mystified the savant, and its use amused the ordinary mortal. Learned societies are to-day puzzling their wits over the "Jobelin of Villon," trying in vain to decipher what that prince of crooks meant by some of his astonishing rhymes. Many of his meanings are to-day utterly unknown. Victor Hugo thought criminal slang worthy a chapter in "Les Misérables." Every earnest investigator of the underworld agrees with him. This subterranean dialect, obscure, ingenious, wonderfully poignant, which passes muster everywhere as a *lingua franca* among criminals, is surely worth more than a casual study.

To everybody the subject appeals as interesting. But to certain classes it is vital. I mean all detectives, policemen, lawyers,—in short, all persons in any way whatever connected with the administration of justice. Crooks can converse at will in the presence of the police, or can write to each other without at all

divulging to the uninitiated their meaning. Justice might less often miscarry, were the subject more thoroughly and generally understood.

Perhaps you will ask why the underworld uses a language the possession of which arouses instant suspicion and perhaps immediate detection. The average policeman in all of our large American cities is not deeply versed in criminal slang and its meaning; he is what the underworld calls a "harness-bull," to wit, an officer in uniform, and the average criminal treats his knowledge with contempt. The prevailing ignorance of the meaning of criminal slang among police officers, detectives, sheriffs, and other officials intrusted with the enforcement of the criminal laws is due to the fact that the meeting of thieves and police is naturally a hostile one; the culprit is in fear, and is overawed by the weight of authority. This is not calculated to inspire any confidence on grounds of friendship, because to learn the peculiar argot of criminals one must mix with them socially and become a hail-fellow well met, and in this way become familiar with their language and mannerisms. Then again, the policeman doing patrol duty on the streets of our large cities is dressed in full uniform and is a marked man, and consequently is shunned by all members of the light-fingered fraternity.

The plain-clothes men have a slightly better opportunity to obtain a knowledge of criminal slang and thief vernacular. If a thief has experienced a bad fall (an arrest), he is put to his wits' end, and, as he is naturally resourceful, he begins at once to get on the right side of the arresting officer. This is where the application of "salve" (getting on the right side of the arresting officer) begins; and by reason of this enforced familiarity the officer might pick up a few words of slang here and there; but the knowledge he gains in this way is never a burden to him. Then again, thieves from different parts of the United States have different dialects and colloquial sayings, and a thief from the Pacific Coast would use a great many words that are wholly unknown to the New York pickpocket. Of course, after a "meet" of Western

thieves with Eastern thieves an interchange of slang and "pat" words follows, and one readily picks up the cant words and sayings of the others. An examination and critical study of criminal slang will, to my mind, prove instructive and entertaining to the reader. We will take for the first illustration the pickpocket, who is called in the slang language "a gun." A "gun" is a thief who does not use force,—somewhat of a paradox, but nevertheless true; and in this manner he is distinguished from the "gorilla," the strong-arm highwayman, who holds up people on the highway, and relieves them of their valuables.

A "grafter" is a thief, in the language of criminals. This meaning will probably be adopted by honest men, and find a place in all the dictionaries. Then too, the term "jail arithmetic" is so applicable to our embezzling bank officers, conscienceless financiers, swindling contractors, *et id omne genus*, that it deserves a place in our literature.

That criminals consider all persons holding office under a political government "political paupers" should merit the attention of civil service commissions.

A complaint or charge of crime is a "rap," and the complainant is the "rapper." The one whose property is stolen is the "sucker," and the judge is called a "beak."

A "fall" is an arrest, and "fall money" is the money which is used to liberate a man from custody. "To spring a man" is to bail one out who is under arrest; and to help square the "sucker" and get a man off clear from any charge of crime, the "underground wires" must be used. A pocketbook is a "poke," and a man who jumps his bail bonds, becoming a fugitive from justice, is a "lamaster."

The thief who steals your pocketbook is the "wire" or "tool," and a gang of pickpockets consisting of three or more people who travel together to steal is called a "mob." A "swell mob" is a gang of first-class pickpockets who can hire first-class legal talent, and have good financial backing.

When a man is convicted of crime he is "settled," or, to use the English

phrase, "unfortunate." If a girl loses her fellow through a court sentence she is "divorced," in the language of the underworld.

A "swell mouthpiece" is a very good lawyer, while a very bad one is called a "shyster."

A pickpocket is frequently called a "dip," and in Western states a "cannon."

A shoplifter is called a "booster," or "hois-ter" or "hyster," and an exceptionally smart one "a swell booster." A green-goods man when plying his trade is said to be "out of the spud." Store thieves who steal jewelry are called "penny-weighters," while thieves who tap store tills are called "damp-getters," and when working are said to be "out of the heel."

Thieves who steal diamonds or other precious stones from the person are called "propgetters" or "stone getters." A woman thief is called a "gun-moll," and a male thief who makes a specialty of robbing women is called a "moll-buzzer." A safe blower is called a "gopher man," "peterman," or "yeggman," and "gerver," and an empty safe is called "bloomer." A second-story worker who breaks and enters dwelling houses is called a "houseman," "porch-climber," and "flat worker."

"Turn out" is to discharge from arrest and put a man on the street.

A woman who decoys men, and then her accomplice (alleged husband) black-mails them, is called a "badger worker" or "panel worker."

The go-between of lobbyists, who buys up legislators, is called the "gravel-train," because he has the "rocks" whereby he can debauch legislators; and the lobbyist himself is known to the criminal world as a "dress-suit burglar."

The thief who robs drunks is called a "lushtoucher," and the stylish hotel beat is called a "baron." A lodging house is called a "doss-house," and to sleep is to "doss."

A restaurant is a "dump" or "beanery," and a convict who works the churches and is insincere in his profession of religion is termed a "mission-stiff." A minister is called a "sky-pilot,"

and a Catholic priest is called a "Galway" or "buck."

A prison turnkey is alluded to as a "screw," and prison food is called "steamed grub."

"Mugged" is photographed, and "stood up" is to be placed in the line at police headquarters for identification, and exposed to the gaze of probable "rappers."

An "Irish Club House" is the police station, and an "ink pot" is a resort for low characters.

A "thimble" and "turnip" is a watch, and counterfeit money is "bad dough." Diamonds with flaws are called "bum rocks," and a "fixer" is a man who looks after the interests of the man who is arrested, squares the "sucker," hires the lawyer, and attends to all necessary details.

A chief of police is a "buzzard" or mean person, and a "good fellow" is a thief, man or woman, who pays his bills.

A "prison stool pigeon" is a "trusty psalm singer," or "pig," and "stick and slug" means "keep together and fight."

"Slinging the lingo" is to hold a conversation in slang, while a "mush" is an umbrella, and a "wipe" is a handkerchief.

"Track 13 and a wash out" is a life sentence in a Western penitentiary, and "Salt Creek" means death in the electric chair.

"Anchor" is a stay of execution of sentence, and a "life boat" is a pardon.

"Making the boast" is getting by the pardon board and obtaining a pardon. "Shake down" is paying for police protection against your will, and a "dead criminal" is one who has become discouraged, reformed, or given up grafting.

"Rat" is a cheap thief who squeals on "fall money," and refuses to pay his bills.

These are but a few specimens out of hundreds which might be given. The vocabulary of criminal slang is large; and, strangely enough, there runs through it a vein of good-natured humor.

Cross-Examination of the Perjured Witness

BY FRANCIS L. WELLMAN

Being the part of Chapter IV, from his remarkable book, entitled "The Art of Cross-Examination," copyright 1903, by MacMillan Company, New York, and reprinted in CASE AND COMMENT by special permission of the author.



TWO famous cross-examiners at the Irish bar were Sergeant Sullivan afterwards Master of the Rolls in Ireland, and Sergeant Armstrong. Barry O'Brien, in his "Life of Lord Russell," describes their methods. "Sullivan," he says, "approached the witness quite in a friendly way, seemed to be an impartial inquirer seeking information, looked surprised at what the witness said, appeared even grateful for the additional light thrown on the case. 'Ah, indeed! Well, as you have said so much, perhaps you can help us a little further. Well, really, my lord, this is a very intelligent man.' So playing the witness with caution and skill, drawing him stealthily on, keeping him completely in the dark about the real point of attack, the 'little sergeant' waited until the man was in the meshes, and then flew at him and shook him as a terrier would a rat.

"The 'big sergeant' (Armstrong) had more humor and more power, but less dexterity and resource. His great weapon was ridicule. He laughed at the witness and made everybody else laugh. The witness got confused and lost his temper, and then Armstrong pounded him like a champion in the ring."

In some cases it is wise to confine yourself to one or two salient points on which you feel confident you can get the witness to contradict himself out of his own mouth. It is seldom useful to press him on matters with which he is familiar. It is the safer course to question him on circumstances connected with his story, but to which he has not already testified

and for which he would not be likely to prepare himself.

A simple but instructive example of cross-examination conducted along these lines is quoted from Judge J. W. Donovan's "Tact in Court." It is doubly interesting in that it occurred in Abraham Lincoln's first defense at a murder trial.

"Grayson was charged with shooting Lockwood at a camp meeting, on the evening of August 9, 18—, and with running away from the scene of the killing, which was witnessed by Sovine. The proof was so strong that, even with an excellent previous character, Grayson came very near being lynched on two occasions soon after his indictment for murder.

"The mother of the accused, after failing to secure older counsel, finally engaged young Abraham Lincoln, as he was then called, and the trial came on to an early hearing. No objection was made to the jury, and no cross-examination of witnesses, save the last and only important one, who swore that he knew the parties, saw the shot fired by Grayson, saw him run away, and picked up the deceased, who died instantly.

"The evidence of guilt and identity was morally certain. The attendance was large, the interest intense. Grayson's mother began to wonder why 'Abraham remained silent so long, and why he didn't do something!' The people finally rested."

The tall lawyer (Lincoln) stood up and eyed the strong witness in silence, without books or notes, and slowly began his defense by these questions:

"Lincoln. And you were with Lockwood just before and saw the shooting?"

"Witness. Yes.

"Lincoln. And you stood very near to them?"

"Witness. No, about 20 feet away.

"Lincoln. May it not have been 10 feet?"

"Witness. No, it was 20 feet or more.

"Lincoln. In the open field?"

"Witness. No, in the timber.

"Lincoln. What kind of timber?"

"Witness. Beech timber.

"Lincoln. Leaves on it are rather thick in August?"

"Witness. Rather.

"Lincoln. And you think *this* pistol was the one used?"

"Witness. It looks like it.

"Lincoln. You could see defendant shoot,—see how the barrel hung, and all about it?"

"Witness. Yes.

"Lincoln. How near was this to the meeting place?"

"Witness. Three quarters of a mile away.

"Lincoln. Where were the lights?"

"Witness. Up by the minister's stand.

"Lincoln. Three quarters of a mile away?"

"Witness. Yes,—I answered *ye twiste*.

"Lincoln. Did you not see a candle there, with Lockwood or Grayson?"

"Witness. No. What would we want a candle for?"

"Lincoln. How, then, did you see the shooting?"

"Witness. By moonlight! (defiantly).

"Lincoln. You saw this shooting at 10 at night, in beech timber, three quarters of a mile from the lights,—saw the pistol barrel, saw the man fire, saw it 20 feet away, saw it all by moonlight? Saw it nearly a mile from the camp lights?"

"Witness. Yes, I told you so before.

"The interest was now so intense that men leaned forward to catch the smallest syllable. Then the lawyer drew out a blue-covered almanac from his side coat pocket, opened it slowly, offered it in evidence, showed it to the jury and the court, read from a page, with careful deliberation, that the moon on that night was unseen and only arose at *one* the next morning.

"Following this climax Mr. Lincoln moved the arrest of the perjured witness as the real murderer, saying: 'Nothing but a *motive to clear himself* could have induced him to swear away so falsely the life of one who never did him harm!' With such determined emphasis did Lincoln present his showing that the court ordered Sovine arrested, and under the strain of excitement he broke down and confessed to being the one who fired the fatal shot himself, but denied it was intentional."

TO BE CONTINUED.

The old severity of the penal code has long since passed away, yet the ancient procedure with all its loopholes of escape and all the safeguards and presumptions in favor of the criminal is, to a large extent, still retained. It is largely inapplicable to present conditions, and in the interest of justice, as well as social order and security, it ought to be modified, as it has been in England, where it originated.—Prof. James W. Garner.

Criminal Law Reform

*Suggestions Contained in Addresses Delivered by Prominent
Members of the Bar on This Important Subject.*



By Hon. F. H. Norcross, Chief Justice Supreme Court Nevada:

FOR centuries the world has proceeded upon the theory that the way to deal with crime was to impose severe punishment upon the offender. Long sentences, to be served out in prisons, where only hardship and cruelty were to be expected, were considered the proper thing. Terror was to be the force that was to hold crime in check. It has taken the world many centuries to make at last a beginning in experimenting upon some theory in dealing with crime, other than that of vengeance. Gradually, more and more, during the last quarter of a century, different ones intrusted with the administration of justice and the enforcement of law concluded that it might be worth while to try the experiment of injecting a little more of intelligent and well-directed humanity into the methods of dealing with offenders. When these methods were tried, usually conditions were found to improve.



By Hon. Horace E. Deemer, Chief Justice Supreme Court Iowa:

PENOLOGISTS have demonstrated that it is not the severity of punishment which acts as a deterrent from crime. Certainty and celerity of the processes of the law are really the greatest discouragement to the criminal classes. When the offender has been convicted of his wrong to society, then may society justly show mercy; then should it begin an investigation as to its own responsibility for the conditions which brought about that wrong; and then should it undertake the solution of the problem of how to treat the culprit. Punishment should be made to fit the criminal, and not the crime; and he whose liberty is a menace to society should be restrained just so long as it is unsafe to the community for him to be given his freedom. Determinate sentences have been a dismal failure, and the time has arrived for that sort of punishment which commends itself to a humane, intelligent and responsible people. Practically all of the leading penologists of this country now favor the indeterminate sentence as the only reasonable and entirely just method of punishment; and the scheme is worthy of the best thought of all associations having at heart the interests of our common humanity.



By Gerard Brandon, Esq., of Natchez, Miss.:

IT is in the infliction of penalties that we find the most glaring inequalities in the application of our criminal laws. Most misdemeanors are punishable with fine or imprisonment, in the alternative. Usually the fine is imposed (except in aggravated cases or where the accused is specially low in the social scale),—the defendant to stand committed till the fine and costs are paid. The offender with more money or friends pays his fine and is released; the defendant without money or friends serves the jail sentence. Even where the offender whose means are small manages to pay his fine and costs, the hardship upon him is much greater than where the same fine is imposed upon one with greater ability to pay. Yet how seldom, in considering the degree of punishment to be inflicted and the amount of fine to be imposed, does the magistrate think of the ability of the accused to pay. The imposition of a fine of \$5 on one man may be a more severe punishment than a fine of \$500 on another. The only means by which an equality of punishment in cases of misdemeanors can be secured is by so altering our penal statutes as to abolish fines altogether, and to impose jail sentences only. Then all men will truly be equal in the sight of the law. . . . It is just as easy (or just as hard, if you prefer) for one man as another to go to jail; it is not just as easy for one man as another to pay a fine.

By President Taft:

THERE is no subject on which I feel so deeply as upon the necessity for reform in the administration of both civil and criminal law. To sum it all in one phrase, the difficulty in both is undue delay. It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization, and that the prevalence of crime and fraud, which here is greatly in excess of that in European countries, is due largely to the failure of the law and its administration to bring criminals to justice.



By Emanuel M. Grossman, Esq., of St. Louis, Mo.:

OUR criminal law is, of course, the great cause of popular discontent. To it, more than to any other department of the law, may be charged the growing disrespect of all law and the loss of prestige of the lawyer. It is a most deplorable fact, and to the great shame and discredit of our civilization, that in this country, at this advanced age, the statistics show more homicides in proportion to population than in all the principal countries of Europe put together. It is said that we are guilty of about nine thousand homicides annually, with only little more than one out of every one hundred avenged by legal execution. But such lax treatment of crime is not altogether to be charged to the law. The people themselves, who, through the jury, fix the standard of conduct, are largely to be held accountable. . . . But the technicalities of the criminal law are chiefly responsible for the deplorable state of public disapproval. The vicious doctrine of presumed prejudice—presumed, as in this state from errors of even insignificant triviality, even from error committed by a stenographer in the misspelling of a word, or in the omission of the article "the," though the crime with which the defendant was charged and found guilty may have been the most atrocious known to our civilization,—has brought upon our law and courts such a storm of disapproval that lawyers find it futile to attempt to allay it.



By North T. Gentry, Esq., of Columbia, Mo.:

A SERIOUS defect in our Criminal Code is the abuse of the law on the subject of continuances, and on the subject of change of venue. It often happens, indeed in some countries it is the practice, for the defendant in a criminal case who is out on bail and who is interested in dodging a trial, to procure as many continuances from the regular judge as possible, and, when his last application for a continuance is overruled, to ask for a change of venue on account of the prejudice of the judge, and thereby secure another delay. After the new judge is called in, another delay is asked for on the ground that the defendant has just then discovered that the inhabitants of the county are so prejudiced against him that he cannot have a fair and impartial trial.



By Hon. M. C. Sloss, Associate Justice Supreme Court California:

THE public cannot successfully cope with the perpetrators of crime, unless it has the right to call upon them to either give a statement of the facts, or run the risk of having an unfavorable inference drawn from their failure to give it. Nor would there be danger of injustice from the adoption of this change. An innocent man could rarely, if ever, be harmed by taking the witness stand to declare his innocence. "It must not be forgotten," said a prominent New York lawyer in a recent address, "that the rule that a defendant in a criminal case cannot be compelled to incriminate himself was enacted at a time when the defendant was not allowed to be a witness in his own behalf." And he added the opinion that "nine out of ten crimes go unpunished because of the tradition, which found its birth in the Dark Ages."

Side by side with the limitation of the right of the accused to stand mute should go the absolute prohibition of testimony or confessions obtained from persons under arrest, as the result of private questioning by officers of the law. The horrors of the "third degree" are the direct result of the rule prohibiting the prosecution from calling the accused as a witness, or basing any argument upon his failure to take the witness stand in his own behalf.

Editorial Comment

A brief review of current topics



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¶ EDITORIAL POLICY:—It is the purpose of CASE AND COMMENT to voice the highest legal and ethical conceptions of the times; to act as a vehicle for the dissemination and interchange of the best thought of the members of the legal profession; to be both helpful and entertaining,—serving the attorney both in his work and in his hours of relaxation.

Edited by Asa W. Russell.

Genius and Jails.

GENIUS is generally erratic, and often has a fine disregard for conventionalities and laws. This attribute has led many a man, highly endowed by nature, to a prison cell. A few months ago it was discovered that a young man in a Western penitentiary was a gifted poet,—a more than potential Villon or Wilde,—one whose lines suggested the fiery rapture of Swinburne's verse. He had been imprisoned, when but nineteen years of age, for stealing a small sum of money at a time when he was starving. Executive clemency was asked and obtained in his behalf.

Another prisoner showed himself able to produce in a far northern latitude

wonderful results with lemon trees. He succeeded in raising, in the prison yard, lemons weighing two or three pounds. For him also a pardon was asked.

Another penitentiary contained a mathematical genius who claimed to have discovered "the reduction of the general equation of the tenth degree to an equation one degree lower." If he has made this discovery, hitherto believed impossible, he has made a name for himself as great or greater than any mathematician, living or dead.

Such instances as these bring up a delicate question as to society's duty to a criminal under such circumstances. Having found a genius in a prison cell, shall it leave him there to work out his time? Or shall it open the doors on the ground that his brilliant writings or rare discoveries have discharged his debt and "assoiled his shame?"

It is clear that any man who has been reasonably punished, and who is willing and anxious to do better, ought to be given the opportunity. While genius ought not to confer immunity from punishment, it may well be considered in abridging the penalty of the law,—especially if the offender is repentant and willing to try to make the most of himself.

Playing the Game.

AT the recent session of the New York State Bar Association, Honorable Elihu Root repeated the statement which he made a year ago, "that we are too apt, at the American Bar, to act as if in litigation we were playing a game, with the judge as referee of the game." This criticism is doubtless to a considerable extent deserved. Practically, the courts are a battle ground for the lawyers. There is no technicality too trivial for some attorneys to take advantage of it in defending their clients. The guilt or innocence of the accused is often given little thought by the opposing counsel, or is treated as a minor issue.

The prosecutor and his associates feel it is their duty to convict. If they fail, it is a personal defeat. The attorneys for the defense are hired to free their client. If they lose, they feel that they have not earned their money, or at least have lost a part of that valuable asset called professional reputation. In other words, it is a game between prosecution and defense, in which life, liberty, and justice are incidentally involved.

Such conditions are highly prejudicial to the best interests of the legal profession and of the public. The field of criminal practice is one of notable opportunity. It invites to eminent service, and offers special distinctions. It rests with the responsible members of the Bar to reform this evil, so far as it may exist, in both criminal and civil actions. In the words of Senator Root: "Only the Bar itself can cure that, and realize the highest usefulness of a noble profession by devoting its learning, its skill, and its best effort to securing for every suitor, as promptly as possible, a fair and final judgment on the merits of his case."

The Evolution of Portia.

NOTHING is more significant of the modern feminine invasion of the precincts of the law than the recent demand for a court to be conducted entirely by women, and for the purpose of trying cases wherein women alone are interested. It is urged that such a tribunal could be maintained successfully, especially in our large cities, where there are not a few women who are engaged in the practice of the law. There would be a woman on the bench, women to plead at the bar, women in the jury box, and women litigants or culprits. Whether male spectators would be tolerated, or unceremoniously ejected by the Amazon attendants, has not been announced.

This proposition, if seriously made, seems to have little to commend it. Our courts are open to men and women alike, and the rights of the latter are as carefully protected as those of the former. In fact a woman, especially if attractive, has always been dealt with in a most

chivalrous manner by our juries. There is no more reason for basing a separate jurisdiction on the distinction of sex than there would be on the ground of nationality.

Speeding up the Legal Machine.

AN Ohio judge of the common pleas court has established a new world's record for granting a divorce.

Reno judges held the speed title for some years, claiming that divorces could be secured in the courts of that city in five minutes.

Then a Montana judge jumped into the limelight, demanding the speed title with a three-minute mark. His record stood for some time.

In the Ohio case it took exactly two minutes and a half to send the complaining benedict under the wire, free.

No time was wasted. Two witnesses were sworn in a twinkling of an eye. They testified in a few words. Statutory grounds were set up, and the judge held them to be sufficient for a decree. The case which had been in progress was interrupted but three minutes, and a divorce had been granted.

Idaho State Bar Association.

THE last meeting of the Association held at Boise from January 12th to 14th is reported to have been the best in its history.

A committee was appointed to draw bills relating to needed reforms in practice and procedure, which will be presented to the present session of the legislature. It is proposed to reduce the time within which a defeated party may appeal, from a year to sixty days, so that when real property is involved a cloud will not hang over the title so long. It is also urged that the practice of having an abstract of the evidence made by attorneys for use on appeal be discontinued, and that, instead, the transcript be sent up by the clerk, and that the attorneys then make a brief covering the points of law.

The Bar also favors an increase in the salaries of judges of the supreme court,

and an increase in the number of judges from three to five.

Several excellent addresses were given and followed by interesting discussions. General Frank Martin, of Boisé, is the new President and B. S. Crow, of Boisé, was re-elected secretary.

It is likely that the Association will meet annually hereafter, instead of biennially.

Euthanasia and the Law.

A FEW months ago an eminent professor in a prominent medical college declared that suicide, and a deliberate hastening of death by a physician, are justifiable. He asserted that a person suffering from an incurable disease is justified in taking his life and putting an end to the torture. He declared that he did not believe that such an act would be held against the suicide in the future state.

Thereafter a physician in a Western city advocated that a dose of prussic (otherwise hydro-cyanic) acid be given as a "mercy tablet" to all idiots and to the hopelessly insane.

The question is presented in a modified form by those who do not believe in the right of one person to kill another to end his agony, but who do believe that we should avail ourselves of anodynes, even though their use in a hopeless case may shorten the brief remaining span of life.

Suicide has little to commend it. If it be conceivable that a sane man should wish to destroy himself, the act would partake more of moral cowardice than of Stoic fortitude. No man has a right to refuse to perform his allotted earthly pilgrimage, or to decline to undergo its disciplinary sufferings, however harsh; nor can he be sure that they will not overtake him in the after-world. It is the height of impiety for the creature to fling back the boon of life to his Creator as a worthless gift. But although the law denounce this offense, it cannot prevent it; nor can the dead be punished.

Just as people will continue to take their lives if they want to, in spite of all laws that are passed, so they will continue to cling to life, however wretched

or desperate their condition, in spite of the theories of others that they ought to pass out quietly and peaceably. Human beings are entitled to life just as long as human skill is able to maintain it. Aside from the judgments of a court of justice, who has a right to say that a human being has forfeited his life? Even the lives of the insane may not be as hapless as we deem them, or without their hidden meaning.

There is much to commend the use of powerful anodynes to mitigate hopeless suffering. It is said that General Grant's last days were made more comfortable by the use of drugs, which very likely actually shortened his life, and that he requested his physicians to use them.

What ought the physician to do in similar cases? Should he give the medicine with the primary object of relieving the pain, and risk fatal consequences? If the patient dies, would the law exonerate the physician? Would the court and jury presume, as in the case of a serious surgical operation, that the intent was merciful, and not homicidal? Probably, where the parties are all reputable it would be presumed that the exigencies of the case required the medication, and that the death was the incidental, and not the premeditated, outcome.

The strictly private execution of condemned persons in their cells, under the influence of an anæsthetic, has also been strongly urged, and is doubtless a humane suggestion. It would at least cast over the death of criminals some touch of decency and decorum, and do away with the awful ceremony and disgusting apparatus of violent death. A man about to pay the last stern penalty of the law is not a thing to exult and gloat over; nor ought his passing to be made a public spectacle.

Women's Night Court.

THE women's night court, recently established in New York city, may be described as the familiar police court with a restricted scope.

A physician and a nurse supplement the judge. Women charged with vagrancy, intoxication, and public immor-

ality will be the court's principal concern; and culprits will go to prison, or to hospital, according to their deserts, or as public policy may determine.

The women of the street make up the greater number of the night offenders. Their cases present the most serious problem. Volumes have been written concerning these unfortunates. But one will search far for a book or pamphlet that even suggests a remedy or cure.

"The probation system, reinforced by such excellent institutions as Waverly House," says a writer in the *Boston Transcript*, "has been made the basis of much well-intended effort; but it is noticeable that even the philanthropic workers who do most through such agencies come at last to regard the woman of the street as a sort of psychological phenomenon, which they describe in their writings, and pity or condemn as the case may be, but for which they do not pretend to assign a preventive. Such writings not infrequently conclude with general remarks about 'the oldest profession in the world,' and let it go at that.

"The recent amendments to the New York law provide for physical examination of women thus arrested, and their commitment to hospitals for not less than one year, in cases where it appears that their condition is a menace to the community. The legislative commission on whose recommendation this feature of the law was enacted frankly stated that the suggestion was made only as a beginning. It did not predict the ending, but the tone of its report points distinctly in the direction of the system in vogue in many foreign cities, of licensing and registering the Magdalens of the community,—an idea which would run counter to many of the settled precepts of the American code of morals."

However, such specializations in legal procedure as are exemplified by the night court should engage the sympathetic interest of all who would promote social betterment.

The Court of Domestic Sorrows.

IN New York a court of domestic relations has been created by statutory provision. The matter has been specifically established to deal with cases of abandonment. With the increase in the economic pressure, and the uneasy shifting to and fro of a large alien population, cases of this kind have developed with disquieting frequency. The court will make a sincere endeavor to effect reconciliation wherever possible. In those numerous cases where the continuing absence of the husband and father puts any such adjustment out of the question, the court will administer justice to the extent that is practicable, and will make provision for the abandoned wife and deserted family. Briefly summarized, the results to be accomplished by establishing one part of the magistrates' court for "domestic relations" cases will be: The expedition of this branch of the police court business; the protection of women and children from contact with crime and criminals; the more orderly, painstaking, and sympathetic consideration of their stories, and the opportunity, by reason of better information, for both magistrates and their probation officers to get into some degree of personal touch with the families who are in trouble. It is also planned to establish a branch office of the superintendent of the out-door poor, in the building in which is located the "domestic relations" court, so that this official may work in harmony with the magistrates. Facilities will be given also for representatives of charitable societies to render their aid as conditions permit; and these latter will, no doubt, be of considerable assistance by way of investigating details that the magistrates, even with such probation officers as may be assigned to them, cannot give attention to.

A court of domestic relations cannot fail to make for greater humanity, and greater intelligence in classes of cases that particularly call for those qualities.



Among the New Decisions

Brief comments on recent decisions of our Supreme Courts

Abatement—suit in other state—insurance policy.—The pendency of a suit in one state upon a policy of insurance is generally held not to constitute a ground of abatement in another suit upon the policy brought in another state. Thus, in the recent Iowa case of *Searles v. Northwestern Mut. L. Ins. Co.* 126 N. W. 801, annotated in 29 L.R.A.(N.S.) 405, it is held that an insurance company cannot abate an action to recover the amount due on a life policy, because it was assigned to a nonresident who has brought suit upon it in the state of his residence, although he cannot be made a party to the action, if the assignment is alleged to have been void for want of capacity to make it.

Appeal—acceptance of benefit—effect.—That the defendant in a suit by which his tax deed is set aside cannot unreservedly accept the taxes, interest, and charges tendered by the bill, and ordered by the decree to be paid him, and then appeal from the decree, is held in *McKain v. Mullen*, 65 W. Va. 558, 64 S. E. 829. This decision rests upon the principle that one cannot avail himself of that part of a decree which is favorable to him, accept its benefits, and then prosecute an appeal to reverse such portion of the same decree as militates against him, when the acceptance of the benefit from the one part is totally inconsistent with the appeal from the other.

The case is accompanied in 29 L.R.A. (N.S.) 1, by an exhaustive note collating the decisions upon the right to accept the favorable part of a decree, judgment, or order, and appeal from the rest of it.

Broker—unauthorized act—ratification by principal.—It is a well-settled rule of law that if an agent, in making a contract on behalf of his principal, inserts therein, without the latter's knowledge, stipulations which he was not authorized to make, and such stipulations are not essential elements of such contract, and are not brought to the notice of the principal, the latter's performance of his part of the contract will not be deemed a ratification of the unauthorized provisions.

This rule was applied in the case of *John Gund Brewing Co. v. Tourtellotte*, 108 Minn. 71, 121 N. W. 417, annotated in 29 L.R.A.(N.S.) 210, holding that where an agent with authority to sell certain land of his principal assigns to one with whom he contracts for a sale, the rent to accrue from tenants during the pendency of negotiations, or from the date of the contract to the completion of the transaction, the principal is not chargeable with liability on the ground of having ratified such a contract, in the absence of notice or knowledge on his part of its unauthorized terms.

Constitutional law—dance house—minors.—The constitutionality of an ordinance or statute forbidding the admission of minors to dance halls was passed upon, apparently for the first time, in the Minnesota case of *State v. Rosenfield*, 126 N. W. 1068, 29 L.R.A. (N.S.) 331, holding that such an enactment is a proper exercise of the police power, and not invalid as class legislation.

Cotenants—liability for rent.—In the Kansas case of *Thurstin v. Brown*, 109 Pac. 784, 29 L.R.A.(N.S.) 238, it is held that the mere occupation and use of the common property by one tenant in common does not create the relation of landlord and tenant between him and his cotenant, or render him liable for rent.

It is further laid down that before a tenant in common will become liable to pay rent to his cotenants for the use and occupation of the common property, his occupancy must be such as amounts to a denial of the right of his cotenant to occupy the premises jointly with him, or the character of the property must be such as to make such joint occupancy impossible or impracticable.

Similarly it is held in *Schuster v. Schuster*, 84 Neb. 98, 120 N. W. 948, that a tenant in common who is in sole, exclusive, and adverse possession under claim of title, is liable to his cotenant for an accounting for rents and profits.

These decisions are accompanied in 29 L.R.A.(N.S.) 224, by a note collating the recent cases on the liability of cotenants to account for use and occupation, or rents and profits, the earlier adjudications on the subject having been presented in a note in 28 L.R.A. 829.

Executor—administrator with will annexed—authority.—It seems that where powers are conferred upon an executor which are discretionary and involve a personal trust, they are held not to devolve upon an administrator with the will annexed by virtue of his appointment; but where the power was clearly not intended to be a personal one, but was evidently conferred upon the executor by virtue of the office, the power is held to pass to such administrator. The question in each case depends largely upon the circumstances and the nature of the power given.

In the recent Kentucky case of *Schlickman v. Citizens' Nat. Bank*, 128 S. W. 823, it is held that authority conferred upon an executor to carry on testator's business without bond will not, upon his resignation, pass to an administrator *de bonis non* with the will annexed.

The decisions dealing with the ques-

tions as to what special powers, other than powers of sale, conferred on an executor by will, pass to an administrator with the will annexed, are collated in a note which accompanies the report of this case in 29 L.R.A.(N.S.) 264.

Husband and wife—actions between—assault.—An interesting question was determined by the United States Supreme Court in the recent case of *Thompson v. Thompson*, Adv. Sh. U. S. 1910, p. 111, 31 Sup. Ct. Rep. 111, holding that the common-law relation between husband and wife was not so far modified as to give the wife a right of action to recover damages from her husband for an assault and battery committed by him upon her person, by D. C. Code, § 1155 [31 Stat. at L. 1374, chap. 854], authorizing married women "to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried."

"Nor is the wife left without remedy for such wrongs," observes the court. "She may resort to the criminal courts, which, it is to be presumed, will inflict punishment commensurate with the offense committed. She may sue for divorce or separation, and for alimony. The court, in protecting her rights and awarding relief in such cases, may consider, and, so far as possible, redress her wrongs and protect her rights."

Injunction—owner of franchise—invasion without right.—It has been repeatedly, but not uniformly, held that where a person or corporation has been granted a franchise for the purpose of constructing and maintaining a plant to be used for the benefit of the public, he may restrain any person or corporation from attempting to exercise such right in competition with him without legislative or municipal authority, although his franchise is not exclusive in the sense that the grant of a similar franchise to be exercised and enjoyed at the same place would be void.

In conformity with the current of authority it is held in the recent Oklahoma case of *Bartelsville Electric Light & P.*

Co. v. Bartelsville Interurban R. Co. 109 Pac. 228, annotated in 29 L.R.A.(N.S.) 77, that an ordinance of a municipal corporation granting to a corporation authority to use the streets, alleys, and public grounds of a city for the purpose of constructing and operating an electric light and power plant to furnish light and power to a city and its inhabitants confers privileges which are exclusive in their nature against all persons upon whom similar rights have not been conferred; and any person or corporation attempting to exercise such right without legislative authority or sanction invades the private property rights of the corporation to whom such franchise has been granted, and may be restrained at the instance of the owner of the franchise.

Insurance—unfiled chattel mortgage—materiality.—An interesting question which seems never before to have been presented to the courts is passed upon in the recent Nebraska case of *Madsen v. Farmers' & M. Ins. Co.* 126 N. W. 1086, 29 L.R.A.(N.S.) 97, holding that the existence in the hands of the mortgagee of an outstanding unfiled chattel mortgage upon a stock of goods, given as security for a guaranty of a debt of the mortgagor, is a fact material to the risk in a contract of insurance of the goods, even though the instrument contains a clause that it "shall not be valid until and unless filed."

Intoxicating liquor—license—forfeiture on conviction.—A novel question, which seems to have been but once previously before the courts, is presented in *Dinuzzo v. State*, 85 Neb. 351, 123 N. W. 309, 29 L.R.A.(N.S.) 417, holding that a statutory provision making it unlawful for a licensed saloon keeper to sell or give away intoxicating liquors after 8 o'clock p. m. and before 7 o'clock a. m., is not invalidated by reason of a provision therein which authorizes a fine of \$100 and a forfeiture of the license upon conviction of the licensee for violating the law, "whether such person convicted shall appeal therefrom or not."

Landlord—suit to establish title—tenant's right to set up title.—The few cases which have passed upon the question sustain the right of a tenant to deny and litigate with the landlord his title to the leased premises, where the title is put in issue by the landlord in an action to establish it, so that a decision favorable to the landlord would establish his title as against any adverse claims by the tenant.

This is the doctrine of the Texas case of *Stevenson v. Rogers*, 125 S. W. 1, annotated in 29 L.R.A.(N.S.) 85, holding that a tenant may, after termination of the lease, defend against an action by the landlord to recover possession and establish title, by showing a superior title in himself, without surrendering possession, where the success of the landlord would destroy the title of the tenant.

Larceny—asportation—sufficiency.—The general rule is that any removal of an article, however slight, from the place where it was found, amounts to such an asportation of the property as will support an indictment for larceny.

The rule was applied in the recent Iowa case of *State v. Rozeboom*, 124 N. W. 783, holding that the mere dragging or rolling, by a shipper of butter, of tubs of that material belonging to another shipper, from one portion of the car to another, with intent to appropriate them to his own use, is sufficient asportation to constitute larceny, although he does not lift them from the floor,—at least where he changes the addresses on them, so as to cause the carrier to transport them as his agent.

The various decisions pertaining to the question are collated in the note appended to the report of this case in 29 L.R.A.(N.S.) 37.

Life tenant—satisfaction of lien—contribution.—The cases seem to be agreed that where a life tenant pays off a mortgage outstanding against the estate, he is entitled to reimbursement from the remainderman. So, it is held in the Nebraska case of *Draper v. Clayton*, 127 N. W. 369, annotated in 29 L.R.A.(N.S.) 153, that where a life tenant of

real estate pays off a past-due encumbrance which is a lien upon the entire estate, he is entitled to contribution from the remainderman, and should recover from him the difference between the principal debt and the present value of an annuity equal to the annual interest charge running during the years which constitute the life tenant's expectancy of life.

Mechanic's lien—excessive statement—effect.—Notwithstanding the statutes of the several states require that a lien claim shall correctly state the sum due the claimant over and above all just credits and set-offs, it is a well-established rule that a mechanics' or materialman's lien will be enforced *pro tanto*, although a larger sum is claimed than is actually due, when such excess is unintentional. But if the excess is due to the inclusion of a charge for which the law does not in any event confer a lien, it will defeat the lien *in toto*, unless the nonlienable charge is separately stated, so that it may be segregated from the lienable portion upon inspection of the lien claim.

If the larger amount is wilfully or intentionally claimed, or if the correct amount might have been learned by the exercise of reasonable diligence, the lien will be defeated *in toto*; and in some cases it is held that a grossly exaggerated claim, remaining unexplained, will have the same effect. The question of excessive lien claims, however, is regulated by statute in some jurisdictions.

In *Griff v. Clark*, 155 Mich. 611, 119 N. W. 1076, it is held that an excess of 60 or 70 per cent in the amount of claim filed to secure a mechanics' lien will prevent the lien from attaching, where the statute requires a just and true statement of the demand due.

This decision is accompanied in 29 L.R.A.(N.S.) 305, by an extensive note, which discusses the case law bearing on the effect of filing an excessive mechanics' lien.

Milk—ordinance authorizing summary destruction—constitutionality.—An interest-

ing question is presented in the recent Minnesota case of *Nelson v. Minneapolis*, 127 N. W. 445, holding that an ordinance authorizing the summary seizure and destruction of milk not conforming to the standard fixed by law is not violative of the constitutional rights of the citizens, nor a taking of property without due process of law.

The report of this case in 29 L.R.A.(N.S.) 260, is accompanied by a note upon the validity of a statute or ordinance authorizing the destruction of food products below a prescribed standard or unfit for use.

Municipal corporation—grant of tax exemption by contract—validity.—A contract between the owner of property in a city and the municipal authorities of the latter, wherein it is provided that no taxes on such property above a specified amount (which is less than the amount of taxes due) shall be collected by the city, in consideration of specified privileges and benefits conferred upon it by the owner of the property, is held unlawful and not enforceable in *Tarver v. Dalton*, 134 Ga. 462, 67 S. E. 929, which is accompanied in 29 L.R.A.(N.S.) 183, by a note collating the recent cases dealing with the power of a municipality to exempt property from taxation, the earlier cases on the subject having been discussed in a note in 15 L.R.A. 860.

Nuisance—cancer hospital.—It may be laid down as a generally accepted rule of law that a hospital, whether for treatment of ordinary diseases or for treatment of contagious and infectious ones, is not a nuisance *per se*, though it may become such by reason of the place of its location or because of the manner in which it is conducted. Thus, in the recent Kansas case of *Stotler v. Rochelle*, 109 Pac. 788, annotated in 29 L.R.A.(N.S.) 49, it is held that the establishment of a cancer hospital in a residence neighborhood in near proximity to dwellings may be enjoined at the instance of one owning and occupying adjacent property.

Public money—appropriation for home for aged women—constitutionality.—An appropriation made in behalf of an association furnishing a permanent Christian home for homeless and aged women, and a temporary home for women seeking employment, is upheld in the Kansas case of *Ingleside Asso. v. Nation*, 109 Pac. 984, as against an objection that the purpose of the association was not a public one. Although the fact that the institution involved in this case generally required a fee as a condition of admitting inmates is not made the basis of a distinct argument in the opinion as to its character as a public institution, that fact seems to have been taken into consideration, and the decision necessarily involves the point that that fact did not deprive the institution of its character as a public charity for the aid of which public funds might be constitutionally appropriated. The note appended to the report of the case in 29 L.R.A.(N.S.) 190, deals with the question of requiring payment from inmates as affecting the right of a charitable institution to public aid or exemption from taxation.

Sale—cattle—concealment of latent defect.—It is well settled that the rule of *caveat emptor* applies to a sale of live stock, even though they are diseased, if the seller is unaware of their condition, and no fraud is practised upon the buyer. On the other hand, if at the time of such sale, the live stock was subject to a disease known to the seller, which he concealed, and which was not discoverable by the buyer with ordinary vigilance, the rule of *caveat emptor* does not apply, and the sale will be deemed fraudulent.

The recent Oklahoma case of *Puls v. Hornbeck*, 103 Pac. 665, annotated in 29 L.R.A.(N.S.) 202, holds that a vendor who sells cattle at a sound price, knowing that they have Texas fever ticks on them, or any other infection affecting their value for the purpose for which they are bought, the infection not being easily detected by those having had no experience with it, and who does not disclose such knowledge to the vendee, is guilty of the fraudulent concealment of

a latent defect, for which he must answer, and the rule of *caveat emptor* does not apply. But the vendor is not answerable unless he has knowledge, prior to the time the sale is consummated, that the cattle had such ticks on them.

School—colored pupils—power to prohibit.—That the legislature cannot, under its police power, prohibit, or authorize the voters of the county to prohibit, the establishment within the county limits, by a private charitable corporation, of an industrial school for colored children, is held in the recent Kentucky case of *Columbia T. Co. v. Lincoln Institute*, 129 S. W. 113. As appears by the note appended to this decision in 29 L.R.A.(N.S.) 53, it seems to be the rule that the power to regulate or prohibit private schools is subject to the same limitations as the power to regulate private property rights in general, under constitutional provisions, although public schools and the subject of education are within legislative control, and the legislature, under the police power, may regulate education in many respects in private schools. But the exercise of such police power must not be arbitrary, and must be limited to the preservation of the public safety, the public health, or the public morals.

Seduction—offer of marriage—defense.—The great weight of authority supports the view that an unaccepted offer to marry is no defense, under a statute making the subsequent marriage of the parties a bar to a prosecution for seduction.

And by the recent Texas case of *Thorp v. State*, 129 S. W. 607, annotated in 29 L.R.A.(N.S.) 421, it appears that the fact that the offer of marriage cannot be accepted because the woman has married another between the commission of the offense and the trial will deprive one accused of seduction of the benefit of a statute providing for the dismissal of the prosecution upon an offer, in good faith, to marry the person seduced.

Succession tax—homestead—statutory allowances.—An unusual question is con-

sidered in the California case of *Re Kennedy*, 108 Pac. 280, 29 L.R.A.(N.S.) 428, holding that the statutory homestead and allowances set apart by the court to the family of a decedent pending administration of his estate are not within the provisions of a statute providing for a succession tax on property which shall pass by will or by the intestate laws of the state, and it is immaterial that had the property not been so set apart it would have passed to the widow under the will.

Tax—ship—steam dredge.—A self-propelling seagoing steam dredge engaged for a long period of time on government work in a particular county of the state where it is located on the day when taxes are assessed is held in *North American Dredging Co. v. Taylor*, 56 Wash. 565, 106 Pac. 162, to be taxable there regardless of where its owner resides or its home port is located. The general rule stated in this case that the situs for taxation of a vessel engaged in foreign or interstate commerce and merely touching at local ports, regularly or otherwise, as an incident of such commerce, is at the home port of the vessel, or at the domicile of the owner, and the exception to that general rule in case a vessel is so used within a particular state, other than that of the home port or domicile of the owner, as to impress her with a local character,—are both well sustained by the authorities, the more recent of which are appended to the report of the case in 29 L.R.A.(N.S.) 105, the earlier decisions having been collected in a note in 37 L.R.A. 518.

Trial—directing verdict on opening statement.—That the court cannot direct a verdict for plaintiff in an action of forcible entry and detainer to recover possession of real estate, upon the admission of counsel in his opening statement that the legal title is in plaintiff, is held in *Pietsch v. Pietsch*, 245 Ill. 454, 92 N. E. 325, which is accompanied in 29 L.R.A.(N.S.) 218, by a note upon the right to direct a verdict or enter a nonsuit on the opening statement of counsel.

Water—grant of preferential rights—va-

lidity.—An unusual question is presented in the California case of *Leavitt v. Lassen Irrig. Co.* 106 Pac. 404, 29 L.R.A.(N. S.) 213, holding that one who owns a system for the distribution of water appropriated for sale, rental, and distribution to the public cannot confer upon any consumer a preferential right to the use of any part of the water, by contract to supply him in perpetuity with water, and then assign him his own rights under the contract, so that he will hold the right to the water free from any obligation to the public system.

Will—signature at the beginning—sufficiency.—The place of signature of a will originally was considered of little importance, the statute of frauds being sufficiently complied with if it appeared in any portion of the instrument, provided it was the testator's intention that it should stand as a signature; but the statute of wills, as enacted in England and several states of this country, expressly requires the testator's signature to be placed at the end or foot of his will; but it cannot be stated with certainty that holographic wills fall within the terms of the statute, although in New York it has been held, in cases involving sufficiency of publication and acknowledgment, that holographic wills do not form an exception to the requirements of such statute.

It has been recently decided in *Meads v. Earle*, 205 Mass. 553, 91 N. E. 916, annotated in 29 L.R.A.(N.S.) 63, that a signature sufficient to meet the statutory requirements is effected by one who, writing his own will, begins by writing his name, with intent that it should stand as his signature to the will when completed, and, after disposing of his property, secures the witnesses' signature to the attestation clause, although he does not sign the will at the end.

Writ—publication—partnership—validity.—A question which has seldom been presented for adjudication was raised in the case of *Ord v. Neiswanger*, 81 Kan. 63, 105 Pac. 17, annotated in 29 L.R.A.(N.S.) 287, holding that service by publication upon a partnership by its firm name, without specifying the individuals composing it, is not necessarily void.



New Books and Recent Articles

Recent Books of Interest to Lawyers

"Modern Theories of Criminology."—By C. Bernaldo de Quirós, Madrid. Translated from the Spanish by Dr. Alphonso de Salvio, with preface and introduction by W. W. Smithers, Esq., of the Philadelphia Bar. (Little, Brown & Co., Boston, Mass.) \$4 net.

"Criminal Psychology."—By Hans Gross. Translated from the German by Dr. Horace M. Kallen, with preface and introduction by Joseph Jastrow, professor of Psychology in the University of Wisconsin. (Little, Brown & Co., Boston, Mass.) \$5 net.

These works are the first of a series of nine volumes, consisting of translations of the most important works of eminent continental authors on Criminal Science. They will afford the American lawyer a systematic acquaintance with the controlling doctrines and methods regarding the individualization of the treatment of criminals, and the study of the causes of crime that now hold the stage of thought in continental Europe.

Señor de Quiros is one of the most eminent of modern Spanish criminologists. He has edited a "Library of Penal Science," and has written another treatise on "Crimes of Violence in Spain." The present work is a concise survey of all the European writers on Criminal Science during the last century. Several hundred are passed in review. It sums up the contributions of each one, aligns the respective schools of thought, and critically places each writer and each theory. It is the best reference handbook for learning the significance of each worker.

The science of criminology is a secondary evolutionary consequence of the study of penology. Until recently the field of the causes and nature of crimes, and treatment of criminals from their psychological, physiological, and social relations to the offense, lay practically unexplored. Every attempt to adopt a theory was trammelled by the phantom tradition of the centuries,—the cry for vengeance by the outraged law. The criminal, being the product of cosmic, biological, or social influences which put him out of harmony with conventional morality, and cause him to disturb the recognized aims of community existence, must be treated as a ward of the state for the purpose of curing his impairment, and restraining him so as to prevent injury to others. These are the practical guiding principles which the true science of criminology is rapidly making more accurate and more capable of application.

Professor Gross, author of "Criminal Psychology," is one of the half dozen most eminent European students of Criminal Science. He has been a criminal magistrate, and is now Professor of Criminal Law at the University of Graz, Austria. He is editor of the "Archives of Criminal Anthropology and Criminalistics," published at Leipzig, and has published numerous books and essays, including a Handbook for Criminal Magistrates (translated into French, Italian, and English). He was one of the first to study the psychological methods of crime-detection described afterwards in this country by Professor Münsterberg.

What Professor Gross presents in this

volume is nothing less than an applied psychology of the judicial processes,—a critical survey of the procedures incident to the administration of justice, with due recognition of their intrinsically psychological character, and yet with the insight conferred by a responsible experience with a working system. The present volume bears the promise of performing a notable service for English readers by rendering accessible an admirable review of the data and principles germane to the practices of justice as related to their intimate conditioning in the psychological traits of men.

"The Complete Orations and Speeches of Henry W. Grady."—Edited by Edwin DuBois Shurter (South-West Publishing Co., Austin, Tex., or San Francisco, Cal.) \$1.50 net, postage 10 cents.

Although Grady is, by common consent, the representative orator of the South since the Civil War, a complete edition of his speeches has never before been published; and this volume was prepared in the belief that a complete collection of the orations and speeches of this gifted Southerner would be welcomed by his many admirers. In preparing this volume, the editor had a thorough search made of the files of the Atlanta Constitution, and has included all the speeches by Grady there found. His great speech on Temperance, for example, delivered in Atlanta during a prohibition campaign, and which has not heretofore appeared in print except in newspaper or pamphlet form, will be found in this volume.

"Jokes that We Meet."—Edited by Edwin DuBois Shurter (South-West Publishing Co., Austin, Tex., or San Francisco, Cal.) Price 75 cents.

Under this title the editor has compiled some four hundred humorous stories, anecdotes, etc., intended to furnish illustrative material for the reader, talker, and speaker, and also to furnish entertainment to the general reader.

A good, pat, illustrative story will enable a speaker to score a success with almost any audience. "How can I illustrate this point?" is a constantly recurring question. In preparing this volume

its usability in affording illustrative material was kept constantly in mind. The stories are first class, fresh, and pointed,—most of them new, and all good.

"American Oratory of Today."—Edited by Edwin DuBois Shurter. (South-West Publishing Co., Austin, Tex., or San Francisco, Cal.) \$1.65 net. Postage 15 cents.

This work contains specimens of present-day American oratory as represented by some two hundred distinguished speakers from all parts of the country. The book is intended for the use of lawyers or any one interested in public speaking. The speeches are all by living Americans on live subjects, and the work is truly "American"—national—in its scope. It constitutes an interesting and suggestive expression of current thought in America as revealed in public speech. Both sides are given representation whenever practicable. There are orations expounding the virtues of the Republican and the Democratic parties; eulogies upon the Union Soldier and the Confederate Soldier; discussions of Conservation, Insurgent Republicanism, and Suffrage for Women; and eloquent Jury Pleas.

"Thirty-Five Years in the Divorce Court."—By Henry Edwin Fenn. (Little, Brown & Co., Boston, Mass.) \$3.50.

Mr. Fenn gathered the material for this interesting book while reporting the divorce court for the London Daily Telegraph. Some of the most famous divorce cases of the past generation came under his observation, and both lawyers and laymen will find his comments most illuminating. He gives character sketches of many of the foremost English lawyers, and the book is replete with anecdotes, which are well told. The author possesses a charming style, and his work is an entertaining and valuable contribution to the literature of the law.

"Criminal Slang."—By Joseph M. Sullivan, LL.B. (Underworld Publishing Company, 178 Washington Street, Boston, Mass.)

This little pamphlet is a dictionary of

the vernacular of the underworld. It contains about a thousand slang words and expressions used by criminals, and defines their meaning. Its perusal will well repay the practitioner engaged in the prosecution or defense of criminal actions.

"Famous Speeches."—Edited by Herbert W. Paul. Cloth, \$3.

"Casebook on Administrative Law."—By Ernst Freund. Buckram, \$4.

"Casebook on Bills and Notes."—By Howard L. Smith and William Underhill Moore. Buckram, \$4.50.

"Casebook on Criminal Procedure."—By William E. Mikell. Buckram, \$3.50.

"Thirty-Five Years in the Divorce Court."—By H. E. Fenn. Cloth, \$3.50.

"New Georgia Code, 1911."—2 vols. Buckram, \$4.50, net.

"The Commercial Code of Japan."—By Yang Yin Hang. (University of Pennsylvania Law School Series, I.) Buckram, \$3.50.

"Introduction to the Science of Law."—By Karl Gareis. Translated from the third revised edition of the German by Albert Kocourek. Buckram, \$3.50.

"General Theory of Law."—By Prof. N. M. Korkunov. Translated into English by Prof. W. G. Hastings. Buckram, \$3.50.

"Law of Mines and Mining."—By Baringer and Adams. Vol. 2. Supplementing Vol. 1. \$7.50. Vols. 1 and 2, \$13.50.

"The Law Applied to Motor Vehicles."—By Charles J. Babbitt. 1 vol. Buckram, \$6.50.

"New Subscription Edition, Extra Annotated, of Pacific Coast Reports, to the Pacific Reporter."—94 vols. (including California Reports, 1-63; Idaho, 1; Montana, 1-3; Nevada, 1-16; Oregon, 1-10; Washington (Terr.), 1, \$211.50. Also 12 vols. (including New Mexico, 1-2; Colorado, 1-6; Utah, 1-2; Wyoming, 1-2), making 106 vols. \$238.50. Also Kansas Reports, 1-29. Annotated, special, \$58. Entire lot of 135 vols., \$296.50.

"Digest of the Laws of Pennsylvania, 1700 to 1907."—2d ed. By George W. Pepper and William D. Lewis. 4 vols. Buckram, \$24.

"The Early Courts of Pennsylvania."—By William H. Loyd. (University of Pennsylvania Law School Series, II.) Buckram, \$3.50.

Kales' "Cases on Persons and Domestic Relations."—(American Case Book Series.) Buckram, \$4.

Henning's "Cases on Suretyship."—(American Case Book Series.) Buckram, \$4.

White's "Texas Penal Code."—Enlarged and revised by Walter Willie. 2 vols. Buckram, \$12.

"Ancient, Curious and Famous Wills"—By Virgil M. Harris. Cloth, 450 pages. \$400 net delivered.

Recent Legal Articles in Journals and Magazines

Bankruptcy.

"Proof of Unmatured Claims in Bankruptcy."—10 Columbia Law Review, 709.

Carriers.

"The Railroad Bill and the Court of Commerce."—4 American Political Science Review, 537.

Congress.

"Powers of Regulation Vested in Congress."—24 Harvard Law Review, 77.

Constitutional Law.

"Constitutional Law in 1909-1910."—4 American Political Science Review, 483.

"Legislative Powers That may Not be Delegated."—20 Yale Law Journal, 88.

"Have the States been Law Abiding? (Powers of State under Constitution)."—44 American Law Review, 801.

Contempt.

"Contempt in Federal Courts."—72 Central Law Journal, 5.

Corporations.

"Corporations as Persons."—32 Australian Law Times, 41.

Courts.

"The United States Supreme Court."—2 American Law School Review, 519.

"The Supreme Court as It Now is."—21 *World's Work*, 13948.

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Criminal Law.

"Should Capital Punishment be Abolished."—47 *Canada Law Journal*, 1.

"Insanity as a Defense to Crime."—41 *National Corporation Reporter*, 689.

"Preventive Detention."—74 *Justice of the Peace*, 625.

"The Grounds of Pardon in the Courts."—20 *Yale Law Journal*, 131.

"Too Much Expected of Criminal Judges."—4 *Maine Law Review*, 81.

"Great Cases of Detective Burns; How Abe Ruef Confessed."—36 *McClure's Magazine*, 386.

Deeds.

"The History of a Title: A Conveyancer's Romance."—2 *American Law School Review*, 499.

Evidence.

"The Law of Survivorship in a Common Disaster."—2 *American Law School Review*, 504.

Executors and Administrators.

"Power of Personal Representative to Continue Decedent's Business."—23 *Bench and Bar*, 96; 24 *Bench and Bar*, 15.

Health.

"Stamping Out the Diseased; Should We Segregate the Unfit?"—149 *London Magazine*, 583.

Highways.

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"Meetings on Highways."—75 *Justice of the Peace*, 14.

Homicide.

"Murder Trials as Amusements."—32 *Australian Law Times*, 45.

Husband and Wife.

"Wife's Right to Independent Advice."—47 *Canada Law Journal*, 41.

"When and in What Cases may the Husband Recover Real Estate Conveyed to Him by His Wife during the Married State?"—72 *Central Law Journal*, 78.

Insurance.

"The Liability of Insurance Contract."—4 *Maine Law Review*, 65.

"The Meaning of Fire in an Insur-

ance Policy against Loss or Damage by Fire."—24 *Harvard Law Review*, 119.

"Social Insurance."—59 *University of Pennsylvania Law Review*, 283.

Larceny.

"Asportation in Larceny."—75 *Justice of the Peace*, 26.

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"Letters on Legal Education."—2 *American Law School Review*, 516.

"The Place of English Legal History in the Education of English Lawyers."—10 *Columbia Law Review*, 723.

Legal Ethics.

"The Ethics of Advocacy in an Unjust Cause."—17 *Case and Comment*, 433.

"Can the Lawyer Advertise?"—17 *Case and Comment*, 439.

"Dealing with Client's Money."—17 *Case and Comment*, 443.

"The Lawyer's Compensation."—17 *Case and Comment*, 447.

"The Acquisition and Retention of Clients."—31 *Canadian Law Times*, 17.

License.

"Valuation of Licensed Houses for Excise Duty Purposes."—74 *Justice of the Peace*, 626; 75 *Justice of the Peace*, 15.

Limitation of Actions.

"Statute of Limitations and the Land Titles Act."—47 *Canada Law Journal*, 5.

Lincoln.

"The Poetry of Lincoln."—193 *North American Review*, 213.

"Lincoln in Myth and in Fact."—21 *World's Work*, 14040.

"Side-Lights on Lincoln."—81 *Century Magazine*, 589.

"The Career of a Country Lawyer. Abraham Lincoln. I."—44 *American Law Review*, 886.

Master and Servant.

"The Federal Employers' Liability Act."—20 *Yale Law Journal*, 122.

Monopoly.

"The Supreme Court and the Anti-Trust Act."—10 *Columbia Law Review*, 687.

"The Sherman Anti-Trust Law."—44 *American Law Review*, 827.

"Has the Sugar Trust Case been Overruled?"—44 *American Law Review*, 858.

Mortgage.

"The Small Mortgage and its Pitfalls."—2 American Law School Review, 512.
Negligence.

"The Rule in Rylands v. Fletcher. (Liability of one who keeps on his land anything likely to do mischief, for injury caused by its escape.)"—59 University of Pennsylvania Law Review, 298.

Pensions.

"The Pension Carnival."—21 World's Work, 13967.

Philippines.

"The Extraordinary Session of the Philippine Legislature and the Work of the Philippine Assembly."—4 American Political Science Review, 516.

Poor and Poor Laws.

"Foreign and Colonial Systems of Poor Relief. II."—130 Law Times, 307.

"Report of the Departmental Committee on Poor-Law Orders (Outdoor Relief)."—130 Law Times, 317.

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Public Money.

"Wasting the Government's Money."—21 World's Work, 14001.

Reed.

"Thomas Breckett Reed, the Statesman, The Wit, and the Man."—81 Century Magazine, 613.

Selden.

"Selden as Legal Historian."—24 Harvard Law Review, 105.

Taxes.

"Constitutionality of Federal Corporation Tax Law."—72 Central Law Journal, 59.

Trial.

"The Separation of a Juryman from His Fellows."—75 Justice of the Peace, 38.

United States.

"The Element of Tort as Affecting the Legal Liability of the United States."—20 Yale Law Journal, 95.

War.

"The Carnegie Peace Fund."—193 North American Review, 180.

Witnesses.

"Constitutionality of the Rule Excluding Atheists as Witnesses."—72 Central Law Journal, 22.

"Psychology for the Witness Stand."—72 Central Law Journal, 41.

"Cross-Examination of the Perjured Witness."—17 Case and Comment, 450.





Quaint and Curious

Odd and interesting legal incidents

A Near Lawyer.—An enterprising man residing in a Western state advertises on a blotter as follows:

"I AM NOT A LAWYER, But a Law Student and Notary Public.

800-Volume Law Library, with State Reports Added as they are issued. Read Law in 1904. Opened a General office in 1907. Both 'Phones. Over P. O.

"I WILL BE GLAD TO SERVE YOU When in need of some one to draw a Lease, Deed, Mortgage, Contract, Will; or Settle an Estate; Make, Continue, or Examine Abstracts; Collect a Note or Account; Insure your Building, Stock, Goods, Auto, or Yourself against Sickness or Accident; Make a Loan or Conduct Your Law Suit before a Justice of the Peace."

New Appellate Procedure.—A ranchman living in the Panhandle of Texas had a grievance against a neighbor, and brought suit before a justice of the peace. At the trial judgment was rendered against the plaintiff. After reflecting upon his wrongs for several weeks, he decided that he wanted to appeal to the supreme court. His attorney instructed him to take all the papers in the case, place them in a sack, and forward them by express, addressed to "The Supreme Court of Texas, Austin, Texas, In Care of the Governor." This was carefully done. No decision has yet been reported back.

A Mere Fraction.—Exactness and particularity of description, as well as economy, of real property, are beautifully illustrated in a Illinois tax deed. It conveys the "east vigintillionth of a vigin-tillionth of the east 1/64 inch" of a certain lot. When surveyed and staked off, it would be worth going to see.

Mortgage Souls for Finery.—Two negro women, residing in Alabama mortgaged themselves "heart, body, and soul" to a local negro merchant for \$20 worth of dry goods purchased by them. No other security is mentioned in the paper, which was filed in the clerk's office of the probate court. Although such a mortgage is not legally binding, all the parties to the contract appeared to be perfectly satisfied.

A Unique Inventory.—Mrs. Corra Harris, author of "The Circuit Rider's Wife," and "Eve's Second Husband," a story which recently appeared in the Saturday Evening Post, has furnished an inventory of her deceased husband's estate to County Court Clerk Hunt. The inventory is probably unique in court records throughout the United States.

Mrs. Harris's husband, Lundy H. Harris, is generally supposed to be the hero of "The Circuit Rider's Wife."

The inventory furnished Mr. Hunt, and which appears on the official records of the county court clerk's office in Nashville, is as follows:

"Nashville Tenn.

"Mr. W. F. Hunt,

"Dear Sir—I have your card saying that if I do not furnish an inventory of the estate of Lundy H. Harris, of which I was appointed administratrix, 'within ten days from receipt of this notice, you will proceed as the law directs.'

"I did not know it was my duty to furnish such an inventory, and now that you demand it, I do not know how to do it.

"If the one I send you is not in proper form to be recorded upon your books, I enclose postage, and request you to let me know wherein I have failed.

"It is not with the intention of showing an egregious sentimentality that I say I find it impossible to give you a complete and satisfactory inventory of the estate of Lundy H. Harris. The part that I give is so small that it is insignificant and misleading.

"At the time of his death he had \$2.35 in his purse, \$116 in the Union Bank & Trust Company of this city, about 400 books, and the coffin in which he was buried, which cost about \$85.

"The major part of his estate was invested in heavenly securities, the values of which have been variously declared in this world, and highly taxed by the various churches, but never realized. He invested every year not less (usually more) than \$1,200 in charity, so secretly, so inoffensively, and so honestly that he was never suspected of being a philanthropist, and never praised for his generosity. He pensioned an old outcast woman in Barton county, an old soldier in Nashville. He sent two little negro boys to school, and supported for three years a family of five who could not support themselves. He contributed anonymously to every charity in Nashville; every old maid interested in a 'benevolent object' received his aid; every child he knew exacted and received penny tolls from his tenderness. He supported the heart of every man who confided in him with encouragement and affection. He literally did forgive his enemies, and suffered martyrdom September, 18, 1910, after enduring three years of persecution without complaint. He considered himself one of the chief of survivors, and was ever recognized as one of the largest bondholders in heaven.

"You can see how large his estate was, and how difficult it would be to compute its value so as to furnish you the inventory you require for record on your books. I have given you faithfully such items as have come within my knowledge. Sincerely yours.

Corra Harris."

Intermittent Punishment.—A Canton judge has sentenced a prisoner to spend every Sunday in jail till further notice. The man was found guilty of assault, and clearly deserved considerable punishment. But he had a large family de-

pendent upon him, who had committed no offense and did not deserve to suffer. To impose an ordinary workhouse sentence would punish not only the man, but also every member of his family.

So the ingenious judge decided to allow the prisoner to go free for the six working days, in order that by his labor he could continue to provide food for wife and little ones. But Sunday, the day of rest, is the one logical day of punishment. On this day the man who has offended the law may make expiation and reparation, and the innocent will not suffer.

While this scheme of justice may work well in particular cases, it is evident that it cannot be generally put into effect. It would seem, however, that the state ought, instead of compelling prisoners to remain idle, or confiscating their labor power, to provide some means whereby their earning capacity may be made of pecuniary benefit to those dependent upon them.

Another interesting incident of this nature is reported from Georgia, where it is said that United States District Judge Newman, moved by the pathetic letters he had received from wives and children in the north Georgia mountains, to permit their husbands and fathers to come home for Christmas, ordered eight moonshiners who are serving sentences in the Atlanta jail released, so that they might spend the holidays with their families. Judge Newman made the condition that the eight moonshiners should return to jail after Christmas and finish their sentences, and each man gladly agreed.

"I am sending you home for Christmas," said the judge, "to return to jail after the holidays and complete your sentences. Can I trust you?"

"You can," said an old moonshiner, who acted as spokesman. "No mountaineer ever broke his pledged word."

Presumption of Death.—In *McCartee v. Camel*, 1 Barb. 455, in which the question arose as to the presumption of a certain person's death after seven years' absence, unheard of, it appeared that the last time news had been received from her she was living at Never Die, near Balti-

more; and the administrator probably acted upon the presumption that she was dead because letters written to her some ten or twelve years before had remained unanswered. The chancellor, however, said that it was almost as unsafe to rely upon that circumstance as evidence of her death as it would have been to presume from the name of her last-known place of residence that she would live beyond the usual period of human life.

Self-Accusers.—A Minnesota justice of the peace learned that the legislature at its last session had passed a law requiring milk and cream buyers to take out a state license, when called upon to impose a fine upon a neighbor for so doing. Recalling that he himself was guilty of violating the same law, he promptly imposed upon himself and paid a similar fine. This is a commendable instance of civic virtue.

The motives of the California man who recently asked for a warrant for his own arrest on a charge of vagrancy, and received five days on the chain gang, are not so apparent. Possibly he was hungry, and could see no other method of receiving food in exchange for labor. Perhaps he was a budding writer in search of local color and realism. Or he may have been unbalanced mentally. In any event he doubtless found the sentence long enough.

Novel Reasons for Divorce.—Fraudulent representation by her husband that he was a baptized person was adjudged sufficient ground for granting a divorce to a woman in Indianapolis, recently. In accordance with such representations she obtained a dispensation to marry the man who became her husband, but later discovered he had never been baptized. She alleged that the dispensation was not a valid one, and that holding her to the marriage under it would result in denying her the rights of her church.

Because his youthful bride of five weeks objected to walking with him barefooted in the dew-covered grass before sunrise, an elderly and wealthy husband has brought suit for separation in the courts of New York. The wife is now living without the state. According to the papers filed in court she took two early walks with her husband, but firmly

declined to continue the practice, and forthwith left him.

Correspondence of an unusual nature formed part of the evidence before the Minnesota supreme court in the trial of a divorce action. The wife, as indicative of her husband's treatment of her, submitted three sheets of a hotel letter paper which she received from him through the mail while he was in another city. The sheets bear only two words, "Friend wife," and for the rest are nothing but much black ink. The husband, interpreting the missive for the bewildered court, said that a letter which his wife had written made him "very wrathful," and he felt the need of a reply which "would express his feelings," so he just poured the ink on the sheets and mailed them when they dried.

Remedies for Wife Beating.—A young woman recently declared in the Reno divorce courts that she had been compelled to endure her husband's abuse and tyrannical fits of anger until, when he struck her with his fist upon her breast, from which she was unconscious for two hours, she decided to stand it no longer, and forthwith left him. She said her spouse believed a husband should beat his wife in order to keep her subdued. To remedy this condition of affairs she sought and obtained a divorce.

Recently a Pennsylvania justice of the peace sent a constable after a chronic wife-beater who had again beaten and badly injured his wife. When the prisoner arrived he found his Honor awaiting him with a horsewhip, which he wielded vigorously upon the miscreant, until the latter, thoroughly cowed and flogged, begged for mercy. This method is somewhat summary, but quite likely to be effectual.

A Washington (D. C.) woman whose husband kicked her sought neither divorce nor judicial championship. She sued her husband for damages, but failed to recover because the statute authorizing separate suits by a married woman was not broad enough to warrant such an action. When the time comes that married men must pay for abusing their wives, we fear that a lot of them will have to go into bankruptcy.



Judges and Lawyers

Personal mention of Bench and Bar

Illinois' Chief Justice

who has served for twenty years in a judicial capacity.



HON. A. K. VICKERS

HONORABLE Alonzo K. Vickers was born on a farm in Massac county, Illinois, on September 25, 1853. He was educated in the public schools and in the high school of Metropolis, the county seat of Massac county. His youth was passed in school attendance and working on the farm. In 1861 his two older brothers patriotically went to the defense of the Union. Alonzo, then a boy of eight, was the oldest son left at

home to aid his widowed mother. Thus early in life he learned to bear the burden of responsibility, and laid the foundation of the sterling qualities that have distinguished his manhood.

At the age of nineteen he became a teacher in the public schools, and followed this congenial occupation for six years.

He studied law in the office of Judge Robert W. McCartney, of Metropolis,

Illinois, and was admitted to the bar in 1882. He located in Vienna, Johnson county, where he enjoyed a lucrative practice for a country lawyer.

In 1886 he was elected as a Republican to represent his district in the lower branch of the Illinois legislature, and served one term. Upon the expiration of his brief legislative career, he resumed the practice of the law, and in 1891 was elected circuit judge of the first judicial circuit of Illinois and re-elected in 1897 and 1903. After his election to the circuit bench, in 1903, he was assigned by the supreme court to service on the appellate court of the second district of Illinois, which position he filled for one term of three years. At the end of his term as appellate judge, he was nominated for judge of the supreme court, to which position he was elected June 4, 1906, for a term of nine years. At the June term, 1910, he became chief justice of the supreme court of Illinois, which position he is now filling.

Judge Vicker's experience as lawyer, legislator, and circuit and appellate judge has peculiarly fitted him to perform the duties of the high position which he occupies.

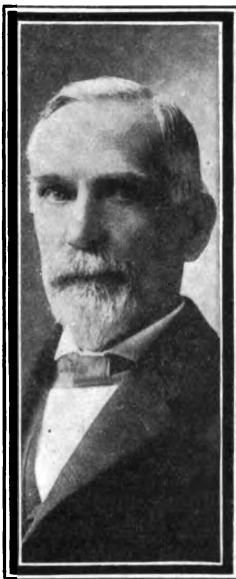
After his election to the supreme bench, he removed with his family to the city of East St. Louis, where he now resides, and where his son is engaged in the practice of law.

Distinguished Maryland Judge

HONORABLE
James A.

Pearce, the son of James Alfred Pearce and Martha J. Pearce, his wife, was born at Chestertown, Maryland, April 2d, 1840.

James Alfred Pearce, the father, was a member of Congress from Maryland for two terms, 1835 to 1839, and was elected a senator of the United States from Maryland in 1841, where he was continued by three successive elections until his death, in December, 1862.



HON. J. A. PEARCE

James A. Pearce, the son, received his earlier education at Washington College, Chestertown, Maryland, and was graduated from Princeton in the class of 1860. He was a tutor at Washington College, Chestertown, for two years after graduation. Later he studied law in Baltimore with Brown & Brune, and was admitted to the Bar in Baltimore May 1st 1864. Immediately thereafter he began practice in Chestertown, and continued in active practice until November, 1897. He was elected state's attorney for Kent county in 1867, and served two terms, until 1875.

In November 1897, he was elected chief judge of the second judicial circuit of Maryland, comprising Cecil, Kent, Queen Anne, Caroline, and Talbot counties, and as such, an associate judge of the court of appeals of Maryland, for a term of fifteen years. Judge Pearce reached the age of retirement (seventy) April 2d, 1910, when the legislature extended his term for the period for which he was elected, *viz.*, until November, 1912. This action of the legislature was a splendid tribute to his judicial worth.

Personally Judge Pearce is a scholar-

ly and courteous gentleman, who, during his long career at the Bar and on the Bench, has exemplified the best traditions of his profession.

Louisiana Jurist Dies

Honorable Thomas J. Kernan died at his home in Baton Rouge, Louisiana, on January 9th. He was born in Clinton, East Feliciana parish, February 6th, 1854. Following his preparatory studies at Clinton High School, he attended Washington and Lee University, from which he graduated in 1873. After teaching for a time, he studied law in the office of his father, and was admitted to the bar in 1877.

Although one of Louisiana's most distinguished lawyers, Judge Kernan held but few public offices. He was a member of the American Bar Association, and at the St. Paul meeting four years ago read a paper on "The Unwritten Law," that brought him into national prominence. He was presidential elector from Louisiana in 1892, a member of the constitutional convention of 1898, and a member of the general assembly from East Baton Rouge during the sessions of 1904-1908.

He was the author of a great many of the reform measures during the Blanchard administration. He was also a prominent member of the commission on reform legislation.

He fathered the negotiable instruments bill, which was passed by the legislature, and which placed notes and negotiable paper of Louisiana on a parity with the commercial paper of other states. This has proven to be a most valuable aid to the state's financial and business interests.

Judge Kernan also worked faithfully for the Torrens land system in Louisiana, but the bill was never passed by the legislature.

He was one of the leading members of the special tax commission, of which Honorable Edgar H. Farrar was chairman, and which submitted a report to the legislature of 1908, advising a complete change in the tax system of the state.

Death of Justice Rogers.

Supreme Court Justice Watson M. Rogers died on February 1st, at his home in Watertown, New York. His death was the result of an injury to his head, received in a fall on an icy sidewalk two weeks ago. Justice Rogers was sixty-five years old. He was born at Cape Vincent December 3, 1846. In early life he taught school. He was graduated from the Albany Law School in 1868, and practised law in Watertown until 1900, when he was elected to the bench of the fifth judicial district for a term expiring December 31, 1914.

Justice Rogers had held court several times in New York city. Abe Hummel was convicted of conspiracy before him, and he heard the cases of Mary Farmer, tried for the murder of Sarah Brennan, and of Albert T. Patrick, convicted of murdering William Marsh Rice, the last time Patrick was sentenced. Several years ago, before going on the bench, Justice Rogers was called to New York to assist the district attorney in prosecuting violations of the election law. He succeeded in getting a number of convictions.

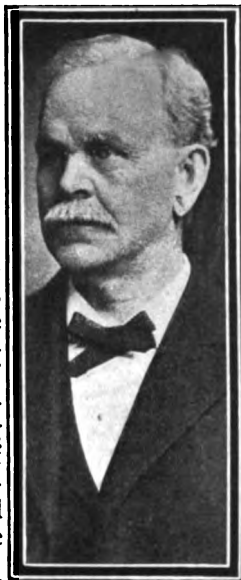
Maryland Trial Lawyer Dies.

Thomas J. Peddicord, the oldest member of the Garrett County (Md.) Bar and its recognized leader, died at his home in Oakland after a brief illness from pneumonia. He was admitted to the bar in January, 1871, and opened an office at Rockville, where he continued the practice of his profession until 1873, when he removed to Oakland. There was rarely a case of importance tried in Garrett county in which he did not appear, and his practice extended elsewhere. At one time he was prominently identified with the Maryland National Guard.

He contributed largely to the press, and his thoughtful articles were eagerly read by the general public. His unfailing courtesy of demeanor endeared him to a host of friends.

Missouri's Late Chief Justice.

HONORABLE Gavon D. Burgess, late chief justice of the Missouri supreme court, was born in Mason county, Kentucky, November 5, 1835. He was educated in the common and select schools of his native state. He married Miss Cordelia Trimble, of Flemingsburg, Kentucky, she being a niece of Chief Justice John Marshall of the United States Supreme Court.



Judge Burgess had been a member of HON. G. D. BURGESS the state judiciary for thirty-six years, one half of that period being spent on the circuit bench, and one half on the supreme bench. He was elected judge of the eleventh judicial circuit (now the twelfth) in 1874, re-elected in 1880, and again in 1886. He was promoted to the Missouri supreme bench in 1892, and re-elected in 1902.

It may be said of Chief Justice Burgess that he was a lawyer of the old school,—a man of rugged personality, with strong convictions on the public questions of his time. He was a product of the common-school system, and his preparation for the highest place in the judiciary of his adopted state was found in the exacting, all-round practice of the country circuit, the same school in which some of our greatest statesmen and jurists received their early training for the higher honors which awaited them. His associates have testified concerning him: "He was a great advocate when at the bar, he was yet greater as a judge,—fearless, efficient, painstaking, and courteous. A courageous, vigorous, honorable man,—the best type of citizenship. He has passed into the history of the state, and his fame will grow with it forever."

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ROScoe POUND

Story Professor of Law in Harvard University. He formerly held the professorship of Criminal Law in the University of Chicago. Professor Pound is especially interested in procedural reform and has made noteworthy addresses before many State Bar Associations.



CHARLES R. HENDERSON

Professor of Sociology in the University of Chicago and United States Prison Commissioner. Professor Henderson edited the four volumes entitled "Correction and Prevention" prepared for the eighth International Prison Congress.



LIGHTNER WITMER

Professor of Psychology in the University of Pennsylvania. Professor Witmer has pursued inquiries concerning the prevention of crime through adequate educational, mental and hygienic treatment of boys and girls, especially during the adolescent period.



DR. ADOLF MEYER

Director of the New York State Psychiatric Institute and Professor of Psychiatry in Johns Hopkins University. Dr. Meyer has deeply studied the medico-legal aspects of insanity and is interested in the reform of criminal procedure.



The Humorous Side

[Frame your mind to mirth and merriment; which bars
a thousand harms and lengthens life.—Shakespeare

The Indigent Sane.—“That fellow who tried to kill the judge is crazy, isn’t he?”
“No, he’s too poor to be crazy—he couldn’t hire a lawyer to prove it.”—Picayune.

Big Damages.—“Did Simpkins get any damages in that assault case?”
“Did he? My dear fellow, you ought to see his face.”—St. Louis Star.

His Opinion.—A man had been called as a witness to prove the correctness of the bill of a physician.

“Let us have the facts of the case,” said the lawyer, who was doing a cross-examination turn. “Didn’t the doctor make several visits after the patient was out of danger?”

“No, sir,” answered the witness. “I considered the patient in danger as long as the doctor continued his visits.”

The Judge’s Joke.—Judge Emery Speer presides over the Federal court in the southern Georgia district.

A prisoner was brought before him for sentence, and the judge gave the man fifteen years in the Atlanta Federal prison.

“Your Honor,” said the prisoner’s counsel, “I beg that you will reduce that sentence. As you can see, my client is in very poor health. He cannot live for fifteen years. He can live but a short time. He is dying now, your Honor, and I beg that you will not be so severe in your penalty. I ask you to be merciful. I beg of you to reduce my client’s sentence, in the name of humanity, for he cannot live fifteen years.”

“Very well, sir,” said the judge; “I will commute the sentence to life imprisonment.”—Saturday Evening Post.

Cured by Verdict.—The Lawyer.—“Temporary insanity, is generally cured, isn’t it?”

The Doctor.—“Yes, by a verdict of acquittal.”—Philadelphia Record.

A Veteran.—Lawyer.—“The cross-examination did not seem to worry you. Have you had any previous experience?”
Client.—“Six children.”

Knew His Solitary Thoughts.—Lawyer.—“How do you know that this man was given to talking to himself when he was alone?”

Witness.—“Shure, haven’t oi been wid him time and time again when he did it?”—Exchange.

How to Stop Him.—Lawyer Lawless was notorious for his longwindedness. On one occasion he had been spouting forth his concluding argument for six hours, and the end was nowhere in sight, when Judge Ballard beckoned his brother John and whispered: “Can’t you stop him, Jack?” “I’ll stop him in two minutes,” John Ballard replied, confidently. And he wrote and passed to Lawyer Lawless the following note: “My dear Colonel, as soon as you finish your magnificent argument I would like you to join me at the Revere House in a bumper of rare old Bourbon.” Lawyer Lawless, halting in the midst of an impassioned period, put on his glasses and read the note that had been handed him, then he removed his glasses again, and, taking up his hat and bag, said: “And now, may it please the court and gentlemen of the jury, I leave the case with you.” A minute later he was proceeding in stately fashion in the direction of the Revere House bar.—Argonaut.

"One Kind and Gentle Cow."—The Swede section foreman, says the New York World was laboriously filling out a report covering the killing of a cow by second section of No. 64.

The fussy claim agent certainly required an unreasonable amount of information, as evidenced by the printed questions on the blank form:

"Number of train?"

"Number of engine?"

"Name of conductor?"

"Name of engineer?"

"Speed of train?"

"Where was animal struck?"

"Etc., etc."

Ole succeeded but indifferently until he came to the final question, and here he experienced the inward consciousness of one qualified when he wrote in reply to:

"Disposition of animal?"

"He bane wan kind and gentle cow."

The Railroad Forever.—Down in Minnesota Mr. Olsen had a cow killed by a railroad train. In due season the claim agent of the railroad called.

"We understand, of course, that the deceased was a very docile and valuable animal," said the claim agent in his most persuasive claim-agent-like manner, "and we sympathize with you and your family in your loss. But, Mr. Olsen, you must remember this: Your cow had no business being upon our tracks. Those tracks are our private property, and when she invaded them she became a trespasser. Technically speaking, you, as her owner, become a trespasser also. But we have no desire to carry the issue into court, and possibly give you trouble. Now, then, what would you regard as a fair settlement between you and the railroad company?"

"Vall," said Mr. Olsen slowly, "Ay

bane poor Swede farmer, but Ay shall give you \$2."—Everybody's.

A Foolish Question.—"You swear that you did not coerce your wife when she signed this paper?"

"Me coerce my wife? Judge, look at the lady."—Louisville Courier-Journal.

Adaptability.—A New York lawyer tells of an old and well-to-do farmer in Dutchess county who had something of a reputation as a litigant.

On one occasion this old chap made a trip to see his lawyers with reference to a lawsuit he intended to bring. He sat down with one of them, and laid out his plan at great length. The lawyer said: "On that statement you have no case at all." The old fellow hitched his trousers nervously, twitched his face, and hastily added:

"Well, I can tell it another way."—Brooklyn Life.

Overhauled.—A dejected looking man who was suing for divorce told such a pathetic tale of abuse on the part of his wife that the judge finally asked:

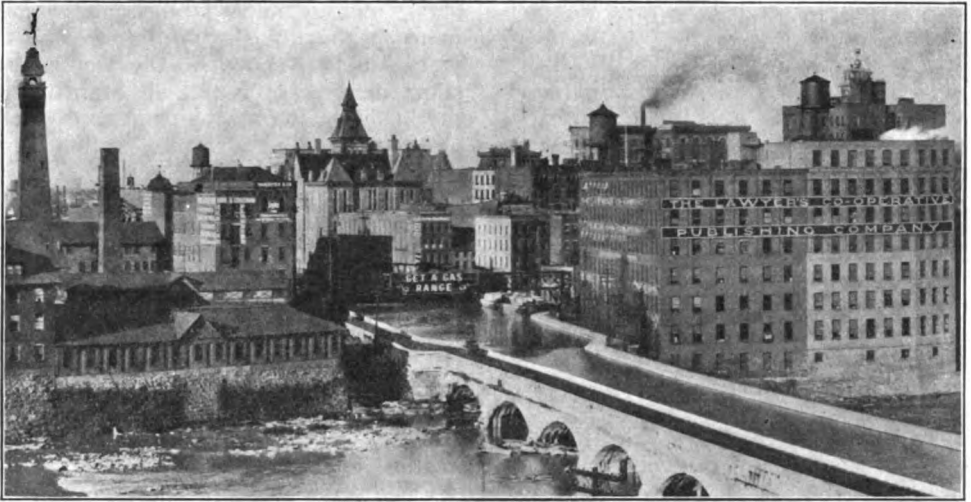
"Why, man, where did you meet this woman?"

"Meet her?" said the man with a suggestion of tears in his voice, "I never met her anywhere. She overtook me!"—Democrat and Chronicle.

A Defect in the Proof.—An attorney was addressing a jury on behalf of a prisoner.

"Gentlemen," he said, "witnesses have sworn that they saw the accused fire his gun; they have sworn they saw the flash and heard the report; they all fall flat; they have sworn that this bullet was extracted from Pete Jackson's body; but, gentlemen, in the name of justice, I ask you where is the evidence that the bullet hit Pete Jackson?"—London Tit-Bits.





In 1911

The Story of the Co-ops.



WHEN the writer used to carry a green bag under his arm (with a sample volume of L.R.A. in it) he was frequently asked "Why do you people call yourselves 'Co-operative?'" Sometimes the question was stronger, "What right have you folks to claim that you are 'co-operative' when in reality you are a stock company managed for dividends just like all the other law publishing houses?" And thereby hung a talk, and that is the tale you are going to hear now from the small boy who in 1882 used to drive the big 1400 lb. bay horse and "lumber wagon" carrying "sheet stock" from the railroad to the tin store-house out on the farm.

The "bornin" happened in the law office of a country practitioner in one of the pretty little villages of Western New York. "Happened" is the right word to use, for those responsible did not dream that they were bringing into the world a big idea which would develop into a great publishing house. Those first three were, the lawyer, his junior partner and

his son, a law student in the office. The idea which later grew so big originated in the need which the office felt for a set of U. S. Supreme Court Reports. When they found that the 106 volumes would cost from \$500 to \$600, if they could be secured at all, they evolved a co-operative scheme to get a set cheaper. They reasoned "There must be at least one or two thousand other lawyers who need U. S. Reports. If they will each agree to buy a set we can reprint them in compact form, 4 volumes in one book, for about \$1.00 a volume. A country newspaper press and a little postage soon induced the necessary number of lawyers to guarantee the cost and thus *co-operate* in this reprint, and that is really the whole story. These men had through their own need discovered again the old truth that the man who "does it better" gets the business. It came so fast that the practice had to be abandoned as well as the offices over the grocery, and the "doctor's place" was bought where the whole publishing company (seen in the picture on following page) occupied the whole lower floor. This hearty support gave them faith and courage to believe that it would pay to make the books far bet-

ter than a mere reprint by adding annotations and also by reporting the opinions at first hand from the records of the court at Washington. Right then they discovered another truth: That it is just plain business and good sense to improve your product to just as great an extent as increased patronage makes it possible.

That is the idea which has persisted to the present day in the "CO-OP." management and has kept the word "Co-operative" just as significant as in 1882 although never since then have they had to get advance assurance of support before going ahead.

On completion of the reprint of the U. S. Reports a similar work was performed for the New York Lawyer in the Lawyers edition of New York Common Law Reports and New York Chancery Reports. About this time (1885) their quarters got too small again and it was then decided to move to Rochester, nearer printing and binding plants. There they went into the Hill Building about 15 feet frontage—where one floor was at first enough. It was in this building that the second big idea was born. It was named "Lawyers Reports Annotated." It was a lusty infant too. Very soon its growth forced another change,—to the top floor of a big office building,—then the adjoining building,—then the floor below, until, in 1900, print

shop, bindery and "co-ops." all joined hands in the Aqueduct Building—the six story building shown in the picture. A short nine years found all branches of the business so crowded that the 7 story annex was built. It is now rather more than comfortably filled.

All this is a record of success by "Co-operation." Another phase of it:—Some of the most appreciated improvements have come from far away lawyer friends,—The cumulative index in U. S. Advance Sheets was suggested by a Los Angeles (Calif.), lawyer. Many improvements in Lawyers Reports Annotated have similarly been suggested from outside,—and most of them incorporated in the New Series.

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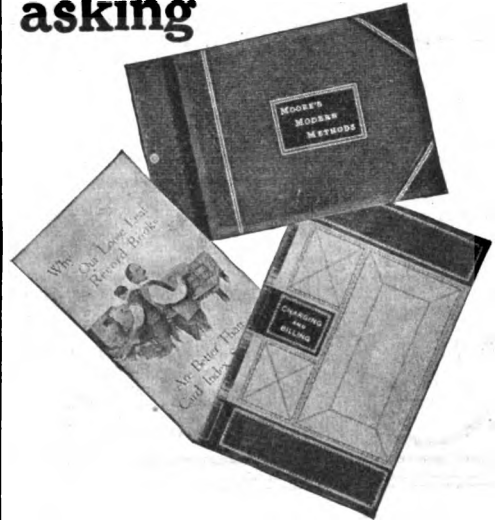
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April
1911

Vol. 17 No. 11

*Nationalism
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By Professor Herman L. Fairchild of the University of Rochester, (N. Y.)



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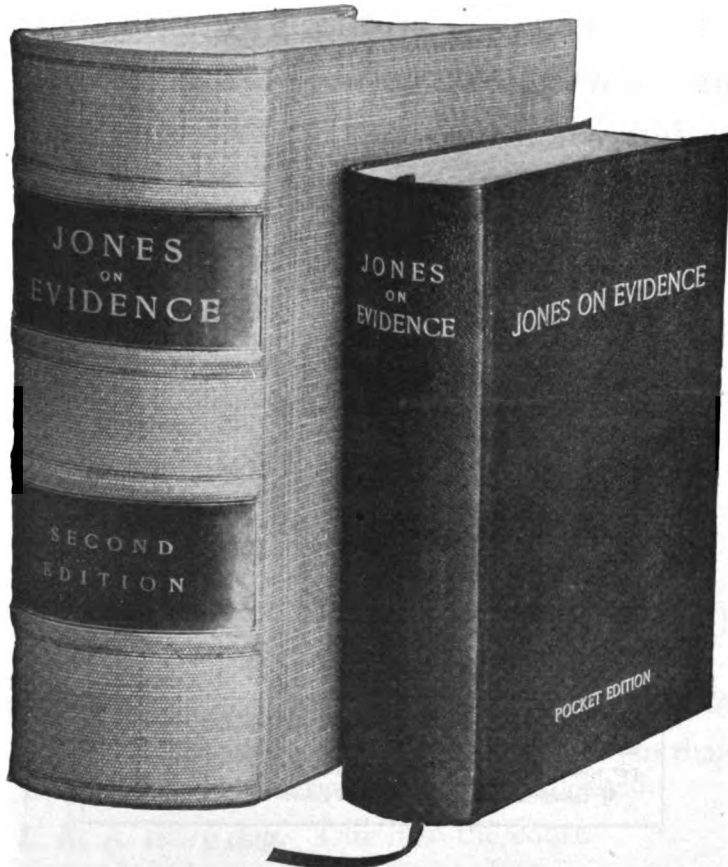
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It is evident that the work of carrying forward the broad policy of conservation of our natural resources could not be committed to better hands. Mr. Fisher's character, ability, and experience would seem to make him an ideal trustee of our vast public domain.

He was admitted to the bar twenty-three years ago, and has since been in practice at Chicago. He was associated with the late Wirt Dexter, and is now a member of the firm of Matz, Fisher, & Boyden. He rendered invaluable service as secretary of the Municipal Voters' League of Chicago, which by fairly publishing the record of candidates for public office, without making any recommendations, gave great impetus to the cause of good government in Chicago.

Mr. Fisher's greatest accomplishment undoubtedly was the settlement of the traction problem in the city of Chicago. He found a great many street car companies with conflicting rights, many of them mismanaged, and hardly any of them giving the people of Chicago a fair and reasonable service. Most of the companies were practically free to serve the public as they chose, and to issue securities as to them might seem best. It is Mr. Fisher's extraordinary merit to have welded all these interests in the public interest, and without doing injustice to the companies so transformed. Students of municipal law have regarded with wonder and admiration his success in transforming a variety of private money-making corporations into useful public-service companies.

Mr. Fisher's portrait appears on the next page. The forest scene, taken on Cedar River, Washington, is from the collection of Prof. Herman L. Fairchild, of the Department of Geology, University of Rochester.



Photo by Doubleday, Page & Co.

[Dr. Cesare Lombroso]
Father of the Modern School of
Criminology

English and American Administration of Justice

BY HARVEY F. REMINGTON,
of the Rochester (N. Y.) Bar



SO much has been said about the superiority of English criminal procedure of late, so many articles have been written lauding the celerity of procedure in English courts, so many lengthy editorials have been penned along this line, anent the Crippen trial, one might easily come to the conclusion, upon this discussion alone, that criminal trials in the United States were conducted solely in the interests of wealthy offenders; that it was largely the aim of criminal practitioners and prosecuting attorneys to secure delay for offenders of all classes, and that these delays were measured by the culprit's bank account or circle of friends.

It seems to me that in making a comparison between English and American procedure, sight has been lost of the fact that conditions in England are wholly different from those in this country. Great Britain and Ireland contain less square miles than the state of New Mexico, and less than one half of the area of Texas. The distance from the most remote hamlet in Great Britain to London is about 600 miles, being less than the distance from Boston to Pittsburg. This country was discovered in 1492, and the population of the original thirteen colonies at the time of the Revolution, less than one hundred and forty years

ago, was about 3,000,000. What is now Great Britain and Ireland, at the same time had thrice that number of inhabitants; now her population of 40,000,000 is doubled by our own. Her courts had been in existence for centuries prior to that time, and the changes in procedure from that day to this have not been many or varied.

If we grant that her administration of justice is more simple and expeditious than our own, she ought to excel us by reason of such a long experience.

We cannot expect perfection in all things, let alone the administration of justice in a country made up of the cosmopolitan population gathered here,—such as exists in no other country; and yet, notwithstanding all of these things, I assert that property rights, personal rights, and the rights of the state are as amply and fully protected under the Stars and Stripes as under any flag.

No country has such complex and varied problems to cope with as the United States. Conditions arising by reason of the heavy tide of immigration from all countries, including Gentiles, Jews, Greeks, Turks, Mohammedans, those of all religions and those with none, those coming to promulgate Socialistic doctrines, the perplexing Chinese and Japanese questions in the West, the abolition of slavery, the rights of the trusts, the organization and rise of federations of labor,—have raised perplexing questions which have demanded the atten-

tion, more or less, of the criminal arm of the law.

It seems to me that the Crippen Case has received undue prominence, and is there not the faintest suspicion that Cousin John thought that this might be an opportune time to impress upon Americans that there was no dallying with English justice, and that the case of a former American subject who had been guilty of a foul crime would be an excellent one in which to furnish an object lesson?

The limits of this article will not permit of the publishing of the array of statistics that could be presented of the work performed by the judges of our courts as compared with the work of the judges of English courts, and which establish the fact that our judges do far more work for a much less compensation than the English Judiciary. I should like to refer those curious to know to a well-tempered criticism of an article appearing in the *North American Review* of August, written by Judge Gemmill of Chicago, reviewing an article by Professor J. W. Garner in the *North American Review* of the previous January. This article cites many instances of severe punishment for trivial offenses, and the miscarriage of justice in English courts, for brutal crimes. I will cite but one instance quoted by Judge Gemmill, inasmuch as this relates to a brutal murder.

"On March 5, 1908, one Dyson brutally beat and murdered his daughter. He was tried, convicted, and sentenced to ten years of penal servitude. The Court of Appeals quashed the conviction because the trial judge misdirected the jury upon a technical point. There was no doubt of the prisoner's guilt, but he escaped all punishment."

Would not those who champion celerity in the conduct of criminal procedure prefer that a criminal should stand a second or even a third trial, rather than have him turned loose upon society through a technicality?

The procedure in English courts did not prevent Messrs. Gaynor and Greene from holding American officers at bay in the Dominion of Canada for many months, several years since.

The popular notion with reference to the administration of criminal justice in England has been that cases were conducted with dignity and decorum, and that it was impossible to railroad an offender to prison; but now one would think, from the comment concerning the Crippen trial, that the moment an offender committed an offense he would probably commence serving punishment for his crime within a few weeks after indictment.

Legal procedure suitable for a monarchy will not suit the needs of a republic. The first to resent what appears to be the autocratic powers of the English judge would be those who advocate such procedure; they desire to tinker with present methods, and introduce innovations which our fathers decided were not wise for liberty-loving Americans. Our forefathers laid down broad principles in adopting the Constitution, and, as Attorney General Wickersham pointed out recently in an after-dinner speech at the New York Bar Association at Syracuse, the tendency of Constitution builders of the present day is to so curb legislative bodies that they are practically automations. It seems to me that one of the reasons for the wonderful development and growth of this country has been the fact that under our Federal and State Constitutions our legislative bodies were given wide latitude in framing laws, and this discretion has, as a rule, been so wisely exercised as to develop, and not hamper, the progress of a state or the nation. It is true that abuses are sure to crop out under Constitutions so framed, but I submit that they are no greater than the evils which result from a too rigid restriction of legislative powers. I confidently assert that our laws keep pace with, and possibly are a little ahead of, public sentiment; in other words, we have what the public demands.

In a generation, under the guiding hands of those discerning the needs, and in accord with the will of the people, great reforms have been brought about in America in legal procedure. Nowhere has a poor man so good an opportunity to secure a vindication of his rights. Our appellate courts consider and pass upon trivial claims at the

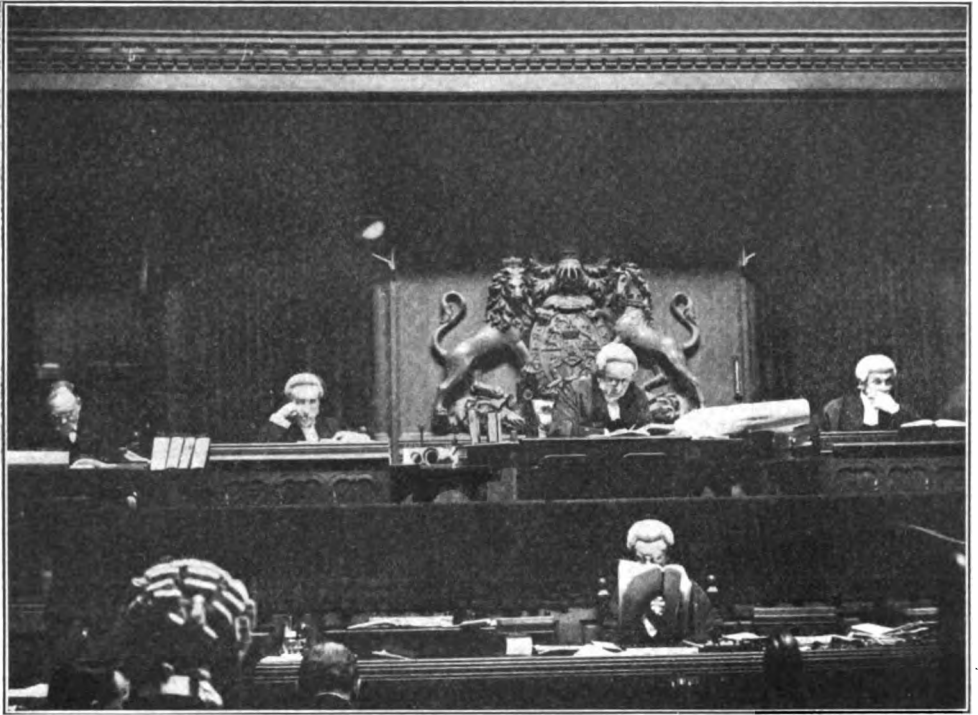


Photo by Brown Bros., N. Y.

English Court of Appeals in Session.

Lord Justice Buckley, Lord Chief Justice Alverstone, Lord Justice Kennedy.

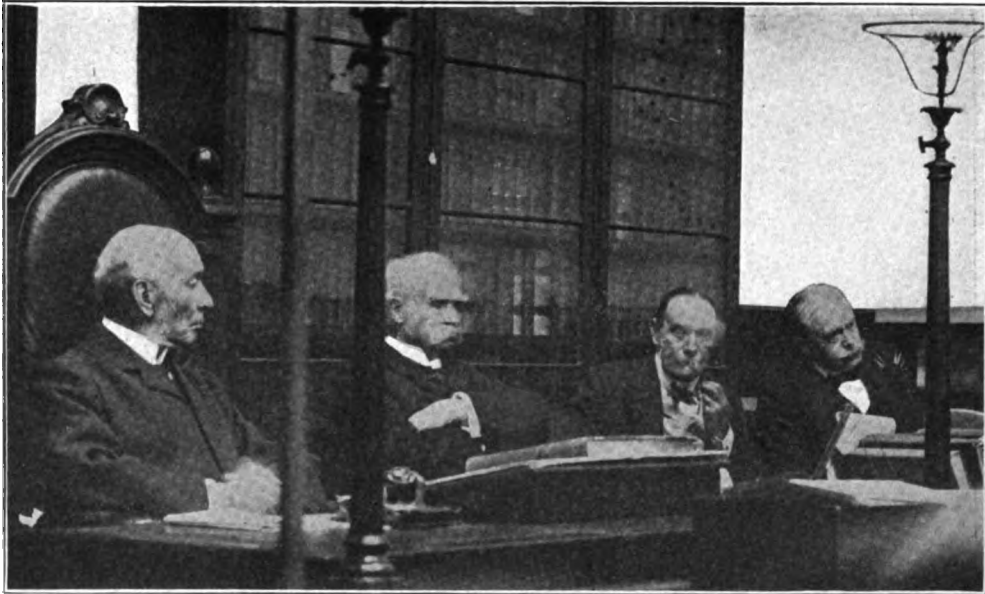
behest of litigants of very limited means, and a person without means can prosecute or defend an action as a poor person. A criminal can have counsel assigned to his defense in almost any jurisdiction of the United States; almost every practitioner performs work gratuitously and ungrudgingly for clients when called upon; chivalric defense of the rights of the oppressed, whether a retainer is in sight or not, is and will continue to be a characteristic of most lawyers.

It is our proud boast that we are all equal before the law, and we do not want these rights abridged. The people are entirely competent and can be depended upon to pass upon questions of reform in procedure as they arise from time to time. Do the advocates of the English methods think there are no cases of *Jarndyce vs. Jarndyce* still slumbering in chancery?

I have attended the sessions of the highest tribunals in many countries, and many court sessions in England, and

have never seen courts of justice, from highest to lowest, conducted with such decorum and dignity as we find in our American courts of record, and especially in those of the state of New York and the United States courts. For one thing, I have never known of an actress having been invited to sit beside the presiding judge, as in the Crippen Case, or tickets of admission issued to the favored who desired to see the exhibition. It is true that in important criminal trials the maudlin and curious will flock in large numbers, but that is true of society everywhere.

Under the English system the Lord Chief Justice of England presides in civil or criminal trials, with or without a jury. There may be good reason why this should be so, but here we would think it a little incongruous were Chief Justice White or Chief Judge Cullen to preside at a murder trial. With many of the English judges an effort to be facetious in trials at the expense of witnesses or counsel is noticeable, strongly



Photograph, Underwood & Underwood, N. Y.

THE CRIPPEN HEARING AT BOW STREET, LONDON.

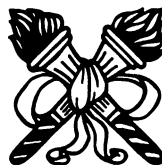
Sir Albert de Rutzer, the presiding magistrate, on the left, next to him Sir William Gilbert and Sir Melville Macnaughton.

reminding one of Mr. Justice Starling, who presided at the famous trial of *Bardell vs. Pickwick*.

A well-appointed court room and a court house furnished in good taste, and the presence of courteous attendants, aid materially in upholding the dignity of our courts. To one who has visited the court rooms in England, the vast superiority of the surroundings of American court rooms must strongly appeal. We find few court rooms in the United States that seem as cramped and stuffy as most of those in London. Many of them do not seem to be much larger than 20 x 20 feet, and are poorly ventilated, dark, and grimy. Contrast this with the court rooms known to the reader, found in the county seat of almost

any county,—especially in the older states.

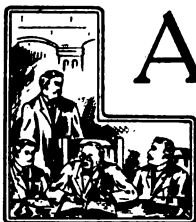
No man lives who is wise enough to devise a perfect judicial system, and he must be a genius who will present a system which would work smoothly both in Montana and Massachusetts. The *personnel* of the Bench and the Bar is of far more importance than any system of procedure. The efforts President Taft is making to strengthen the United States courts will do more in the next decade to improve present conditions than the experiments the visionary would have us make in fashioning our procedure after that of England or some other country. We are living in an age that demands the best, and the solution of problems as they arise will be safely and sanely met at home.



Insanity as a Defense in Homicide Cases

BY FRANK H. BOWLBY

Editor of Wharton on Homicide, and Legal Editor of Clevenger on Insanity and Wharton & Stille's Medical Jurisprudence.



At the annual banquet of the New York State Bar Association, held recently at Syracuse, a special committee on the commitment and discharge of the criminal insane proposed the enactment of a statute providing: "If, upon the trial of any person accused of any offense, it appears to the jury, upon the evidence, that such person did the act charged, but was at the time insane, so as not to be responsible for his actions, the jury shall return a special verdict, 'Guilty, but insane;' and thereupon the court shall sentence such person to confinement in a state asylum for the criminal insane for such term as he would have had to serve in prison but for the finding of insanity; and if, upon the expiration of such term, it shall appear to the court that such person is still insane, his confinement in such asylum shall continue during insanity; and, further, when such a verdict of 'Guilty, but insane,' is returned in a case where the penalty for the verdict of guilty against a sane person is death, such sentence for the insane person thus found guilty shall be for life; but in all cases the governor shall have the power of pardon, after such inquiry as he may see fit to institute upon the question whether it will be safe to the public to allow such a person to go at large."

The purpose of the proposed statute is to remedy and prevent sham pleas of insanity in homicide and other cases, which, at times, have been very prevalent.

The state of Washington, a short time ago, made an effort to accomplish the same object, and has proceeded much further than has New York. But when New York proceeds, let us hope that she will proceed less disastrously. Washington enacted a statute in 1909, providing: "It shall be no defense to a person charged with the commission of a crime, that at the time of its commission he was unable, by reason of his insanity, idiocy, or imbecility, to comprehend the nature and quality of the act committed, or to understand that it was wrong; or that he was afflicted with a morbid propensity to commit prohibited acts; nor shall any testimony or other proof thereof be admitted in evidence."¹ This statute went down in collision with the two constitutional principles which have been made a part of the

Constitutions of nearly, if not quite, every state in the United States, that "no person shall be deprived of life, liberty, or property without due process of law," and that "the right of trial by jury shall remain inviolate."

This enactment conflicted with the "without due process of law" principle on the theory that the sanity of the slayer at the time of the act goes to make up his guilt, as well as the physical commission of the act. If, at the time, he was insane to the extent that he could not comprehend the nature and quality of the act in question, how can it be said to be his act, and why is not a prohibition to make this defense a denial of "due process of law?" And it conflicted with "the right of trial by jury shall remain inviolate," because it was "inviolable" at the time the Constitution was enacted.²

New York, however, has not attempted as much, and apparently what is suggested is within constitutional limits. Under its proposed provision, the previous methods of prosecution, trial, and conviction are unchanged. The change is made in the disposition of the offender after a verdict of "guilty, but insane." The procedure to ascertain guilt or innocence, or sanity or insanity, will be unchanged. Probably the only criticism of the proposed law would be that, in view of the almost, if not quite, universal existence of the principle that sanity, at least, to the extent of being able to comprehend the nature of the act in question, is a necessary ingredient of crime, the prescribed verdict of "guilty, but insane," might be regarded as equivalent to "guilty, but innocent." But this would be a mere play on words; the intent is clear, and no one could be misled. This gives rise to an inquiry and speculation as to what now is the status of the criminal insane, and what would it be were the proposed New York law enacted.

Criminal responsibility generally.

Under existing statutes and rules it may be stated generally that a person who commits a crime acting under the impulse of mental disease is not criminally responsible therefor.³

² State v. Strasburg (Wash.) 110 Pac. 1020. This case is set forth, with the individual opinion of each judge printed, in an article on "Insanity, a Defense," in 3 Lawyer & Banker, 362.

³ Hite v. Sims, 94 Ind. 333; Lilly v. People, 148 Ill. 467, 36 N. E. 95; State v. Mewherter, 46 Iowa, 88; Abbott v. Com. 107 Ky. 624, 55 S. W. 196; State v. Jones, 50 N. H. 369, 9 Am. Rep. 242; Walker v. People, 88 N. Y. 86; Giebel v. State, 28 Tex. App. 151, 12 S. W. 591.

¹ Wash. Laws 1909, p. 891, § 7, Rem. & Bal. Code, § 2259.

A person of insane mind is not subject to punishment for his criminal acts,⁴ his insanity being deemed an excuse whenever it is the efficient cause of a criminal act.⁵ And this is true though the insanity was brought on by the vices of the party himself.⁶ Criminal acts from malice, and not from insanity, are punishable, though the mind of the person committing them was so affected as to avoid his acts in a civil case, as those of a lunatic.⁷ And mental disorders cannot be regarded as evidence of insanity which will confer immunity from punishment unless they are caused by, or result from, disease or lesion of the brain.⁸ And the unsoundness of mind must have been the cause of the crime,⁹ and it must have been so excessive as to overwhelm reason, conscience, and judgment.¹⁰ So, the unsoundness of mind which will excuse from criminal responsibility must be the result of mental disease, as distinguished from weakness or passion,¹¹ and the depression following physical illness, such as takes place ordinarily with men possessing fair average mental powers, cannot be regarded as insanity which will excuse crime;¹² nor is mere weakness of mind;¹³ nor does bad education or bad habits excuse crime;¹⁴ or the fact that the person is of a low order of intellect.¹⁵ And the fact that a man is deaf and dumb does not render him irresponsible for criminal acts;¹⁶ nor is crime excused because committed under the influence of fear and excitement,¹⁷ or jealousy.¹⁸ And mere frenzy or ungovernable passion, however furious, is not insanity which will excuse crime.¹⁹ And the rule is the same though it temporarily dethrones reason, or for the time being controls the will, where the inability to

control it arises from passion, and not from insanity.²⁰ When the conduct of a person is influenced by anger, malice, love of gain, or a heart bent on mischief, as distinguished from insanity produced by the visitation of God, he is responsible for his acts.²¹ And mere mental depravity is not insanity in a legal sense,²² neither is eccentricity, idocy, or hypochondria, insanity which will excuse crime.²³ The insanity which will excuse crime must be not the mere impulse of passion, or idle frantic humor, but an absolute dispossession of the free natural agencies of the mind,²⁴ though it need not be furious and manifested alike on all subjects.²⁵

General mania and idocy.

The rule was laid down in the early history of the common law, that to be exempt from criminal responsibility, one must have been at the time so deprived of his understanding and memory as not to know what he was doing more than an infant or wild beast;²⁶ but this rule has become obsolete with reference to idocy or imbecility, and the rule of the capacity of a fourteen-year-old child has been expressly repudiated.²⁷ So, the presence or absence of a delusion has been stated to be the true test of the presence or absence of insanity, the absence of delusion being a characteristic of a sound mind.²⁸ But the rule that the presence or absence of delusion cannot be said to be the only legal test as a rule of law has been adopted in civil cases.²⁹ And delusion, though not a test, or not the sole test, is evidence of insanity.³⁰ Likewise, some of the cases have adopted the rule that the test of

⁴ *State v. Miller*, 7 Ohio N. P. 458.
⁵ *Lilly v. People*, 148 Ill. 467, 36 N. E. 95; *State v. Jones and State v. Miller*, *supra*.

⁶ *Cluck v. State*, 40 Ind. 263; *State v. Erb*, 74 Mo. 199.

⁷ *R. v. Tuth*, 1 Wheeler, C. C. 52, note.
⁸ *Gunter v. State*, 83 Ala. 96, 3 So. 600.

⁹ *United States v. Faulkner*, 35 Fed. 730; *Conway v. State*, 118 Ind. 482, 21 N. E. 285; *State v. Hockett*, 70 Iowa, 442, 30 N. W. 742.

¹⁰ *State v. Murray*, 11 Or. 413, 5 Pac. 55; *Graham v. State*, 102 Ga. 650, 29 S. E. 584; *Com. v. Wireback*, 190 Pa. 138, 70 Am. St. Rep. 625, 42 Atl. 542.

¹¹ *People v. Durfee*, 62 Mich. 487, 29 N. W. 109.
¹² *Goodwin v. State*, 96 Ind. 550.

¹³ *People v. Hurley*, 8 Cal. 390; *Conway v. State*, 118 Ind. 482, 21 N. E. 285; *Studdill v. State*, 7 Ga. 2; *Fitzpatrick v. Com.* 81 Ky. 357; *Newcomb v. State*, 37 Miss. 385; *State v. Palmer*, 161 Mo. 152, 61 S. W. 651; *Anderson v. State*, 25 Neb. 550, 41 N. W. 357; *Nevling v. Com.* 98 Pa. 323; *State v. Alexander*, 30 S. C. 74, 14 Am. St. Rep. 879, 8 S. E. 440; *Nelson v. State*, 43 Tex. Crim. Rep. 553, 67 S. W. 320.

¹⁴ *United States v. Cornell*, 2 Mason, 91, Fed. Cas. No. 14,868.

¹⁵ *Powell v. State*, 37 Tex. 348; *Fitzpatrick v. Com.* *supra*.

¹⁶ *R. v. Whitfield*, 3 Car. & K. 121.

¹⁷ *People v. Hurley*, *supra*; *Willis v. People*, 32 N. Y. 715.

¹⁸ *Aszman v. State*, 123 Ind. 347, 8 L.R.A. 33, 24 N. E. 123; *People v. Foy*, 138 N. Y. 664, 34 N. E. 396.

¹⁹ *Bolling v. State*, 54 Ark. 588, 16 S. W. 658; *Aszman v. State*, *supra*; *Fitzpatrick v. Com.* 81 Ky. 357; *People v. Finley*, 38 Mich. 482; *State v. Brooks*, 23 Mont. 146, 57 Pac. 1038; *People v. Foy*, *supra*; *Lynch v. Com.* 77 Pa. 205, 1 Am. Crim. Rep. 283; *United States v. Cornell*, 2 Mason, 91, Fed. Cas. No. 14,868.

²⁰ *Williams v. State*, 50 Ark. 517, 9 S. W. 5; *State v. Stickley*, 41 Iowa, 232; *People v. Mortimer*, 48 Mich. 39, 11 N. W. 776.

²¹ *Com. v. Farkin*, 2 Clark (Pa.) 208.
²² *Goodwin v. State*, 96 Ind. 550; *Com. v. Van Horn*, 188 Pa. 143, 41 Atl. 469.

²³ *Hawe v. State*, 11 Neb. 537, 38 Am. Rep. 375, 10 N. W. 452; *State v. Shippey*, 10 Minn. 223, Gil. 178, 88 Am. Dec. 70; *Sindram v. People*, 1 N. Y. Crim. Rep. 448; *Com. v. Cleary*, 148 Pa. 26, 23 Atl. 1110; *Johnson v. State*, 100 Tenn. 254, 45 S. W. 436; *United States v. Young*, 25 Fed. 710; *R. v. Vaughan*, 1 Cox, C. C. 80.

²⁴ *People v. Carnel*, 2 Edm. Sel. Cas. 200; *Hoover v. State*, 161 Ind. 348, 68 N. E. 591; *Com. v. Mosler*, 4 Pa. 264.

²⁵ *United States v. Faulkner*, 35 Fed. 730.

²⁶ *Arnold's Case*, 16 How. St. Tr. 764, Hargrave, St. Tr. 322.

²⁷ *Rodgers v. State* (Tex. Crim. Rep.) 28 S. W. 685. In *State v. Richards*, 39 Conn. 591, however, the court thought that imbeciles ought not to be held criminally accountable unless they have capacity equal to that of ordinary children of fourteen years of age, with the qualification that the comparison should be restricted to the matter of appreciating right and wrong, and the consequences of the act, and that the child taken as a standard should be one in humble life, with only ordinary training; but the court finally submitted the whole matter to the jury, requiring it to say whether the defendant had such knowledge of right and wrong, and such appreciation of the consequences and effects of his acts, as to be a proper subject for punishment.

²⁸ *Com. v. Meredith*, 17 Phila. 90; *Hadfield's Case*, 27 How. St. Tr. 1282.

²⁹ *Denson v. Beazley*, 34 Tex. 191; *Manhattan L. Ins. Co. v. Broughton*, 109 U. S. 121, 27 L. ed. 878, 3 Sup. Ct. Rep. 99.

³⁰ *Com. v. Meredith*, 14 W. N. C. 188.

criminal responsibility is the mental ability to discriminate between abstract right and wrong, criminal responsibility existing where there is sufficient mental capacity to know right from wrong.³¹ And one who has not such capacity is not a proper subject of punishment for criminal acts.³² This rule, too, though at one time well supported, has been generally, if not universally, superseded by other rules, notably the one immediately following.

The prevailing modern rule, which is fast becoming universal, is to test the capacity to distinguish between right and wrong in the concrete instead of the abstract, as having reference to the particular act in question, the test question being whether the accused was capable of distinguishing between right and wrong with respect to the particular act which he committed.³³ Under it insanity which will excuse a criminal act must amount to a derangement so great as to obliterate the sense of right and wrong as to the particular act done, at the time of its performance,³⁴ or as to render the party unconscious that in doing the particular act he was committing a crime.³⁵ The ability to distinguish between moral good and evil, as distinguished from legal good and evil, has been asserted as a test.³⁶ But the modern rule would seem to require an absence of knowledge that the act was wrong, either in

a moral or a legal sense, in order to relieve from criminal responsibility.³⁷

The rule has been quite extensively adopted and seems to be growing in favor, making the capacity to understand the nature, character, and consequences of the alleged criminal act a test of criminal responsibility therefor, holding that, to be effectual as a defense, insanity must be such as to render the accused unconscious of such nature, character, and consequences.³⁸ And a person would be criminally responsible if he had sufficient mind to be conscious of what he was doing,³⁹ but it is frequently regarded as necessary that the accused should not only be incapable of knowing the nature and character of the act, but also that he should be without capacity to distinguish between right and wrong with reference to it, the question being whether he had sufficient use of his reason to understand the nature and character of the act, and know that it was wrong for him to commit it.⁴⁰ As thus modified, the rule is nearly the same as the rule that responsibility depends upon the knowledge of right or wrong of the criminal act in question, and under it, one who is laboring under mental disease to such an extent that he does not know what he is doing, or that he is doing wrong, is not criminally responsible,⁴¹ but he is criminally responsible if he has reason and capacity sufficient to enable him to distinguish between right and wrong, and understand the nature of his acts, and his relation to the party injured,⁴² and sufficient mental power to apply that knowledge to his own acts.⁴³ Many of the cases put the question of knowledge of right and wrong, and that of capacity to know the nature of the act, in the alternative, holding the test of criminal responsibility to be whether the accused, at the time of committing the act in question, was laboring under such incapacity

³¹ *Beasley v. State*, 50 Ala. 149, 20 Am. Rep. 292; *Brinkley v. State*, 58 Ga. 296; *Hornish v. People*, 142 Ill. 620, 32 N. E. 677, 18 L.R.A. 237; *Conway v. State*, 118 Ind. 482, 21 N. E. 285; *Cunningham v. State*, 56 Miss. 269, 31 Am. Rep. 360; *State v. Redemeier*, 71 Mo. 173, 36 Am. Rep. 462; *Burgo v. State*, 26 Neb. 639, 42 N. W. 701; *Walker v. People*, 88 N. Y. 86, affirming 1 N. Y. Crim. Rep. 7; *Nevling v. Com.* 98 Pa. 323; *Giebel v. State*, 28 Tex. App. 151, 12 S. W. 591.

³² *United States v. Shufits*, 6 McLean, 122, Fed. Cas. No. 16,286; *Anderson v. State*, 42 Ga. 9; *Hayes v. Com.* 17 Ky. L. Rep. 1147, 33 S. W. 1104; *Willis v. People*, 32 N. Y. 715; *Com. v. Winnemore*, 1 Brewst. (Pa.) 356.

³³ *Lide v. State*, 133 Ala. 43, 31 So. 953; *State v. Barthleiman*, 120 Cal. 7, 52 Pac. 112; *Taylor v. State*, 105 Ga. 746, 31 S. E. 764; *State v. Mowry*, 37 Kan. 369, 15 Pac. 282; *Abbott v. Com.* 107 Ky. 624, 55 S. W. 196; *State v. Knight*, 95 Me. 467, 50 Atl. 276, 55 L.R.A. 373; *State v. Redemeier*, 71 Mo. 173, 36 Am. Rep. 462; *Knights v. State*, 58 Neb. 225, 76 Am. St. Rep. 78, 78 N. W. 508; *People v. Krist*, 168 N. Y. 19, 60 N. E. 1057; *State v. Spivey*, 132 N. C. 989, 43 S. E. 475; *Blackburn v. State*, 23 Ohio St. 146; *Maas v. Territory*, 10 Okla. 714, 63 Pac. 960, 53 L.R.A. 814; *Com. v. Lutz*, 10 Kulp, 234; *State v. McIntosh*, 39 S. C. 97, 17 S. E. 446; *Johnson v. State*, 100 Tenn. 254, 45 S. W. 436; *Evers v. State*, 31 Tex. Crim. Rep. 318, 37 Am. St. Rep. 811, 20 S. W. 744, 18 L.R.A. 421; *People v. Calton*, 5 Utah, 451, 16 Pac. 902; *Vance v. Com.* 2 Va. Cas. 132; *Eckert v. State*, 114 Wis. 160, 89 N. W. 826; *Youtsey v. United States*, 38 C. C. A. 562, 97 Fed. 937; *R. v. Layton*, 4 Cox, C. C. 149.

³⁴ *McAllister v. State*, 17 Ala. 434, 52 Am. Dec. 180; *Marceau v. Travelers' Ins. Co.* 101 Cal. 338, 35 Pac. 856, 36 Pac. 813; *Hornish v. People*, 142 Ill. 620, 32 N. E. 677, 18 L.R.A. 237; *State v. Wright*, 134 Mo. 404, 35 S. W. 1145; *People v. Montgomery*, 13 Abb. Pr. N. S. 207; *State v. Alexander*, 30 S. C. 74, 14 Am. St. Rep. 879, 8 S. E. 440; *Giebel v. State*, 28 Tex. App. 151, 12 S. W. 591; *R. v. Offord*, 5 Car. & P. 168.

³⁵ *McAllister v. State*, supra.

³⁶ *Kinloch's Case*, 25 How. St. Tr. 997.

³⁷ *McAllister v. State*, supra; *People v. Pico*, 62 Cal. 50; *Choice v. State*, 31 Ga. 424; *State v. Mowry*, 37 Kan. 369, 15 Pac. 282; *Com. v. Rogers*, 7 Met. 500, 41 Am. Dec. 458; *Willis v. People*, 32 N. Y. 715; *Blackburn v. State*, 23 Ohio St. 146; *Com. v. Sayres*, 12 Phila. 553; *State v. McIntosh*, 39 S. C. 97, 17 S. E. 446; *R. v. Townley*, 3 Fost. & F. 839.

³⁸ *State v. Gut*, 13 Minn. 343, Gil. 315; *Humphreys v. State*, 45 Ga. 190; *Hoover v. State*, 161 Ind. 348, 68 N. E. 591; *O'Brien v. People*, 36 N. Y. 276; *State v. Brandon*, 53 N. C. (8 Jones, L.) 463; *Revoir v. State*, 82 Wis. 295, 52 N. W. 84.

³⁹ *Brown v. Com.* 78 Pa. 122; *State v. Swift*, 57 Conn. 496, 18 Atl. 664; *Com. v. Jones*, 1 Leigh, 612; *R. v. Townley*, 3 Fost. & F. 839.

⁴⁰ *Guiteau's Case*, 10 Fed. 161; *State v. O'Neil*, 51 Kan. 651, 32 Pac. 287, 24 L.R.A. 555; *State v. Redemeier*, 71 Mo. 173, 36 Am. Rep. 462; *Mackin v. State*, 59 N. J. L. 495, 36 Atl. 1040; *Walker v. People*, 26 Hun. 67; *State v. Potts*, 100 N. C. 457, 6 S. E. 657; *Davis v. United States*, 165 U. S. 373, 41 L. ed. 750, 17 Sup. Ct. Rep. 360; *R. v. Doody*, 6 Cox, C. C. 463.

⁴¹ *Guiteau's Case*, supra; *State v. Zorn*, 22 Or. 591, 30 Pac. 317; *Com. v. Bezek*, 168 Pa. 603, 32 Atl. 109; *R. v. Arnold*, 16 How. St. Tr. 695.

⁴² *State v. West*, *Houst. Crim. Rep.* (Del.) 371; *State v. O'Neil*, supra; *Spencer v. State*, 69 Md. 28, 13 Atl. 809; *State v. Shippey*, 10 Minn. 223, Gil. 178, 88 Am. Dec. 70; *State v. Haywood*, 61 N. C. (Phill. L.) 376; *Loeffner v. State*, 10 Ohio St. 599; *Nevling v. Com.* 98 Pa. 323; *State v. Bundy*, 24 S. C. 439, 58 Am. Rep. 262; *Stuart v. State*, 1 Baxt. 178; *Leache v. State*, 22 Tex. App. 279, 58 Am. Rep. 638, 3 S. W. 539; *M'Naghten's Case*, 10 Clark & F. 200.

⁴³ *State v. Gut* and *State v. West*, supra.

as not to know the nature and quality of the act he was doing, or, if he did know, that he did not know he was doing wrong.⁴⁴

The right-and-wrong-with-reference-to-the-particular-act test seems to be growing in favor, and is generally satisfactory. On the retributive theory, we are justified in holding all persons who are conscious of the wrongfulness of a particular act which they commit, responsible for that act. And on the theories of prevention of crime and example to would-be criminals in the future, the argument for punishment of persons who, however disturbed may be their minds, are conscious of the difference between right and wrong as to the particular act, is still stronger. Those having charge of lunatics concede that they are subject to discipline, and the police system prevailing in lunatic asylums assumes this; and experts state that lunatics are, as a rule, open to the influence of fear of punishment. They would appear to differ only in degree in this respect from other men, though, of course, mitigation of guilt and diminished responsibility may be claimed for them on account of their infirmity. But as penal law can control their outbursts, the interests of society require that over them penal law should continue to assert its control.⁴⁵

Tests as to insanity as a defense in a criminal prosecution are to be applied with reference to the exact time of the commission of the offense,⁴⁶ though it is proper, in a prosecution of homicide by poison, to submit to the jury the question of sanity or insanity of the accused at the time when the poison was purchased, as well as at the time when it was administered.⁴⁷

Partial insanity or monomania.

Partial insanity is mental unsoundness, always existing, though but occasionally manifested.⁴⁸ And monomania is a derangement of the mental faculties confined to some particular idea or object of desire or aversion;⁴⁹ it is a perversion of understanding in regard to a single object, or a small number of objects.⁵⁰ And temporary insanity consists of occasional fits of madness.⁵¹ And recurrent

insanity is insanity returning from time to time.⁵² The fact that there is partial or temporary insanity does not confer criminal irresponsibility, where the party was not instigated by his madness to perpetrate the criminal act.⁵³ Temporary insanity is as fully recognized as a defense to crime as is permanent insanity.⁵⁴ But where an accused person is not shown to have been innocent, general evidence as to unsoundness upon any subject except that which is under investigation is incompetent.⁵⁵ Where partial insanity is relied upon as a defense, the crime charged must have been the product of the insane condition, and connected with it as effect with cause, and not the result of sane reasoning or natural motives of which the party was capable, notwithstanding his disorder.⁵⁶ It is an excuse for crime only when it deprives the party of his reason in regard to the criminal act in question.⁵⁷ To excuse crime, it must control the will, and make the commission of the act a duty of overruling necessity to the person committing it.⁵⁸ The test of responsibility is like that in other cases,—whether the accused had sufficient capacity at the time of committing the act to distinguish between right and wrong with reference to it.⁵⁹ And partial insanity will not excuse crime unless the accused did not have such knowledge,⁶⁰ or did not know the nature or quality of the criminal act,⁶¹ or did not have power sufficient to apply such knowledge to his own case.⁶² And to justify an acquittal, it must be proved that the act was committed during an attack of the disease, and the act itself is not evidence of such an attack.⁶³

⁵² *Smith v. State*, 22 Tex. App. 316, 3 S. W. 684.

⁵³ *Bovard v. State*, 30 Miss. 600; *Com. v. Cressinger*, 193 Pa. 326, 44 Atl. 433; *State v. Harrison*, 36 W. Va. 729, 15 S. E. 982, 9 Am. Crim. Rep. 626, 18 L.R.A. 224.

⁵⁴ *People v. Ford*, 138 Cal. 140, 70 Pac. 1075.

⁵⁵ *Com. v. McCauley*, 16 Phila. 502.

⁵⁶ *Guiteau's Case*, 10 Fed. 161; *Parsons v. State*, 81 Ala. 577, 60 Am. Rep. 193, 2 So. 854, 7 Am. Crim. Rep. 266; *Stevens v. State*, 31 Ind. 485, 99 Am. Dec. 634.

⁵⁷ *State v. Danby*, *Houst. Crim. Rep. (Del.)* 175; *Freeman v. People*, 4 Denio, 9, 47 Am. Dec. 216; *State v. Miller*, 7 Ohio N. P. 458.

⁵⁸ *Com. v. Mosler*, 4 Pa. 264; *Dejarnette v. Com.* 75 Va. 867.

⁵⁹ *State v. Pratt*, *Houst. Crim. Rep. (Del.)* 249; *People v. Hurtado*, 63 Cal. 288; *State v. Nixon*, 32 Kan. 205, 4 Pac. 159, 5 Am. Crim. Rep. 307; *Grisom v. State*, 62 Miss. 167; *Giebel v. State*, 28 Tex. App. 151, 12 S. W. 591; *State v. Harrison*, 36 W. Va. 729, 15 S. E. 982, 9 Am. Crim. Rep. 626, 18 L.R.A. 224; *United States v. Ridgeway*, 31 Fed. 144; *Kinloch's Case*, 25 How. St. Tr. 891.

⁶⁰ *State v. Lawrence*, 57 Me. 574; *Bovard v. State*, 30 Miss. 600; *State v. Huting*, 21 Mo. 464; *People v. Taylor*, 138 N. Y. 398, 34 N. E. 275; *Com. v. Freeth*, 5 Clark (Pa.) 455; *Dejarnette v. Com.* supra; *State v. Harrison*, supra; *United States v. Holmes*, 1 Cliff. 98, Fed. Cas. No. 15,382.

⁶¹ *State v. Lawrence*, supra; *Com. v. Sayres*, 12 Phila. 553; *United States v. Holmes*, supra.

⁶² *Com. v. Sayres*; *Dejarnette v. Com.* and *United States v. Holmes*, supra.

⁶³ *People v. Pine*, 2 Barb. 566; *Bellingham's Case*, 1 Collinson, Lunacy, 636.

⁴⁴ *United States v. Young*, 25 Fed. 710; *People v. Coffman*, 24 Cal. 230; *People v. Walter*, 1 Idaho, 386; *State v. Lawrence*, 57 Me. 574; *State v. Klinger*, 43 Mo. 127; *Anderson v. State*, 25 Neb. 550, 41 N. W. 357; *Freeman v. People*, 4 Denio, 9, 47 Am. Dec. 216; *Com. v. McCauley*, 16 Phila. 502; *Clark v. State*, 8 Tex. App. 350; *Revoir v. State*, supra.

⁴⁵ See *State v. Coleman*, 27 La. Ann. 691; *State v. Pratt*, *Houst. Crim. Rep. (Del.)* 249; *Smith v. State*, 22 Tex. App. 317, 3 S. W. 684.

⁴⁶ *State v. Coleman*, supra; *People v. Clendennin*, 91 Cal. 35, 27 Pac. 418; *State v. Pratt and Smith v. State*, supra.

⁴⁷ *Laros v. Com.* 84 Pa. 200.

⁴⁸ *Black's Law Dict.* citing *Dew v. Clark*, 3 Ad-dams, Eccl. Rep. 79.

⁴⁹ *Owings's Case*, 1 Bland, Ch. 370, 17 Am. Dec. 311; *Cutler v. Zollinger*, 117 Mo. 92, 22 S. W. 895.

⁵⁰ *Re Gannon*, 2 Misc. 329, 21 N. Y. Supp. 960.

⁵¹ *R. v. Richards*, 1 Fost. & F. 87.

TO BE CONTINUED IN APRIL CASE AND COMMENT

The Humanity of the Law

BY B. A. RICH



“LAWs grind the poor, and rich men rule the law,” said Goldsmith in his “Traveller.” This is a sample of the jibes constantly aimed at the law by wits and cynics, by agitators and anarchists, and especially by those unfortunates who think, rightly or wrongly, that the law has done them an injustice. Great is the number of those who think they have been wronged by the law, and even of those who have suffered real injustice. But, after all, how much does this admission mean? Does it mean that our law is a kind of juggernaut of inhumanity and injustice, or only that, in spite of a dominant purpose to secure justice, it is subject in its operation to human imperfections?

As the law, in ideals and purpose, represents divine justice, those who contemplate these may say with Hooker that “her seat is the bosom of God and her voice the harmony of the world.” On the other hand, those who look at the miscarriages of justice and the grievous wrongs sometimes done in the name of the law because of its imperfections too often think of the law itself as a cruel monster of evil. But everywhere its purposes correspond to the moral development of the lawmakers, and its practical wisdom and justice depend upon the degree of their intelligence. The humanity of the law as it is actually administered is a well-nigh perfect index of the grade of civilization of the people.

It is increasingly characteristic of the law of to-day that it is aiming to protect the defenseless, to help the helpless, to preserve the rights and provide for the wants of those who cannot adequately care for themselves. By a few of many instances, even the least intelligent can see that the humanity of the law is steadily increasing, and that every year new steps are taken to prevent oppression, to abolish suffering, to pro-

tect life and health, to better the conditions of living, to provide intellectual and moral training, and in many ways to give to all increased privileges and higher opportunities for wholesome and happy life.

It may particularly emphasize the spirit of the time to call attention especially to the revolution that has been made during a single generation in the treatment of animals. Laws and societies to prevent cruelty to animals are found everywhere. The work of Henry Bergh in New York has been multiplied a thousandfold, until brutal teamsters and all who have to do with the care of animals have learned to fear the hand of the law. Not only beating, but overloading or otherwise abusing, animals, is made a statutory offense. Under Federal law and some state laws, as shown by the note in 44 L.R.A. 449, shipments of live stock are made subject to penal provisions if the stock is carried more than the specified number of hours without being unloaded for food, water, and rest. So there are statutes making it unlawful to indulge in such old-time sports as cock fighting, dog fighting, or fights between other animals. The laws against cruelty to animals, as shown in Halsbury's Laws of England, vol. 1, p. 419, also impose an obligation to kill an injured and suffering animal when it is cruel to keep it alive, and to kill it in such a way as to inflict the least possible pain and suffering. So the laws have taken cognizance of the subject of vivisection, and heated debates still go on respecting the extent to which they should go. These illustrate how far the law has come toward the high level of humane consideration, even for those animals which men in the past have used or abused, no matter how cruelly, without fear or thought of any power to interfere.

The special care of the law for those who cannot help themselves is emphasized also with especial force in its care for children. A parent whose negligent

failure to supply food or other necessities causes his child's death is guilty of manslaughter, or, if his failure was wilful, he is guilty of murder, as shown by the authorities in Wharton on Homicide (3d ed.) p. 686. And the same rule applies to the abandonment or exposure of the child. The parent may be also guilty of manslaughter by failing to provide medical attendance. On these questions the law has long been settled. Neglect to provide children with sufficient food or bedding for the requirements of health has also been made an offense. The tender regard of the law for the interests of youth is also shown in the laws, which are by some thought too strict, to prevent children from taking part not only in dangerous exhibitions or performances, but in those which are deemed detrimental to their moral welfare. Many are the statutes of the various states dealing with questions of this kind. So the education of children has become one of the most important and prolific subjects of legislation. Laws which deal with some phase of it have become legion. It is true that the welfare of the state itself is involved in this question, so that it is not solely a matter of humanity to the children; yet there is an increasing recognition of the duty of the state to the children themselves, and this element is the chief, if not the only, one in those statutes which deal with the care of the blind, deaf and dumb, defective, feeble-minded, or other classes of children who are not likely ever to become real factors in the body politic. Institutions great and small are multiplied everywhere for the support, care, and development of all these children.

Adults, as well as children, when helpless and needy, are treated by the law as wards of the state. It is too much to say that the state is yet doing its full duty toward all these, but it already does much. The maintenance of homes for the poor has long been a settled policy, and the sacredness of the obligation to them is emphasized by making the overseer of such a place criminally responsible for manslaughter, or murder in an extreme case, if he fails to provide necessary food and care for those in his

charge. It would make a long list to enumerate all the institutions and all the statutes that aim to provide for the various classes of those who are unable to care for themselves. Homes for old soldiers, homes for the feeble-minded, homes for epileptics, homes for the insane, homes for the blind, are everywhere provided and maintained by the law in the interest of humanity.

In dealing with offenders, the chief consideration has been protection to society, rather than humanity. But the interests and welfare of the offender are rapidly coming to be given a large place in the treatment of lawbreakers. Indeed, with juvenile offenders, the tendency now is to make them wards of the court, with proper oversight and training, and not to treat them as criminals at all. Even for adults the system of parole is an application of the same policy.

Laws for the protection of women have also increased manifold. The recognition of their lesser ability to defend themselves against attack, or to meet the strain of excessive toil, has led to numerous statutes to shield them from these dangers. Enactments for this purpose have not always been sustained by the courts, but they have been upheld in many cases.

Going beyond the case of the helpless and of the defective, beyond the case of children and of women, the law has in recent times begun to recognize that there is a great class of people competent to contract and to earn their own living, who are yet, by virtue of their situation, put at a disadvantage, and practically, if not theoretically, unable adequately to protect their own interests in some important matters. This is the class largely composed, indeed, of mature and able-bodied men who are so bound by the circumstances and conditions of their employment as to be more or less at the mercy of employers. In this vast field the law of modern times has undertaken the humane work of providing necessary restrictions and regulations of the terms and incidents of many employments. To make even an enumeration of the statutes on these subjects would fill pages. One illustration

may suffice. Take for instance the legislative restrictions of the hours of labor. Their constitutionality has been considered at length in notes in 65 L.R.A. 33 and 12 L.R.A.(N.S.) 1130, showing much divergence of view among the judges upon the questions involved, especially with respect to the reasonableness of the regulations in particular cases. Space will not permit any review of those statutes. But they furnish an overwhelming illustration of a great and enlarging field of the law that is pervaded with humane purposes.

Many other examples of the law's hu-

manity might be reviewed and while it is easy to enumerate its defects, imperfections, and miscarriages, and many critics see nothing else, yet a fair view of all that is being done and attempted for the interests of humanity incontestably shows that the law increasingly recognizes its obligation toward the helpless and the needy and all who cannot adequately care for themselves. The extent of this recognition and of the practical administration of this purpose of the law is limited only by the degree of the enlightenment and moral development of the people.

Inherent difficulties, peculiar to punitive justice, appear to me to be six: (1) public desire for vengeance when a wrong has been done, which the law is compelled to satisfy; (2) the close contact of criminal law and administration with politics; (3) the inherent unreliability of evidence in criminal causes; (4) the wide scope for discretion necessarily involved in the administration of punitive justice; (5) the intrinsic inadequacy of the chief deterrent upon which punitive justice must rely, and (6) the popular tendency to throw too great a burden upon criminal law—to attempt to do too much by means of it.—Prof. Roscoe Pound.

The Case Against Patrick

BY L. A. WILDER



WHERE the wine press is hard wrought, it yields a harsh wine that tastes of the grapestone," wrote Bacon in respect of judicature, adding that there is no worse torture than the torture of laws. That the wine press was hard wrought in one of America's most remarkable homicide cases is a conclusion that follows a perusal of the record in the case of the People of the State of New York against Albert T. Patrick. A new movement to secure Patrick's pardon is here made the occasion for a review of the case.

It will be remembered that the defendant was convicted of the murder of William M. Rice, upon the theory that the death was caused by chloroform administered by one Jones, the deceased's valet and secretary, at the suggestion of Patrick. The vital and most sharply contested point in the case was as to whether the death occurred as the result of a felonious act, and in the manner alleged; and it is purposed herein to consider that phase of the case.

Mr. Rice died on September 23, 1900, in his apartment in New York city. The only other person in the apartment at the time was Jones, who had been for some time Mr. Rice's secretary, and the only other member of the household. Shortly after the death occurred, the body was embalmed by the arterial process. This process consisted in making an incision into the brachial artery in the upper right arm, and injecting, without withdrawing the blood, a fluid of the "Falcon" brand. An autopsy was performed upon the body forty-three hours after the death occurred, by coroner's physicians, Donlin and Williams, and a chemist and toxicologist, Professor Witthaus. The report showed, among other things, that the left lung was "congested and oedematous—right lung same, and a small area of consolidate lung tissue about the size of a twenty-

five cent piece in lower lobe." The cause of death was not given.

Rice was a multi-millionaire, and after his death the defendant produced checks and assignments of money and securities purporting to have been made from Mr. Rice to himself, and also a will in which he was named as residuary legatee. There was considerable testimony tending to show that these were forgeries. At any rate, Jones and the defendant were arrested on October 4th, upon the charge of forgery. On that day Jones made a statement at police headquarters. Thereafter he made two more statements, each placing the brand of falsity upon the preceding one. Finally, during the following January or February, he made a fourth statement, or rather a confession, which, if true, made him thrice a liar. This confession was along the line of his subsequent testimony upon which the defendant was convicted. As said by Judge O'Brien in his dissenting opinion, when the case was in the court of appeals,¹ "Jones was evidently testifying under a promise of immunity from the public prosecutor, and although he denied that as a witness upon the stand, no fair man can doubt, from the circumstances, that such a promise was made." Indeed, when interrogated on the witness stand as to his conflicting stories, he answered that he was in trouble and wanted to get out of his difficulty.

He testified as to an elaborate scheme involving forgeries and precautions, by which the defendant sought to acquire possession of Mr. Rice's wealth, and into which he entered with the purpose of sharing the spoils with the defendant. He testified that some time before the death there was some talk between himself and Patrick as to chloroform; that the difficulty of procuring it in New York led to the suggestion that he (Jones) have his brother in Texas send him some; and that he did so, and, when he received it, delivered it to the defendant. Jones further testified that shortly

¹ 182 N. Y. 184, 74 N. E. 843.

before Mr. Rice's death his Texas attorney was expected to arrive, and that the fact that his coming might thwart their plans led them to take immediate action. He said that he met the defendant upon the street Sunday afternoon, and received from him the bottle of chloroform; that the defendant instructed him how to administer it; and that he followed the instructions. When he returned to the apartment after meeting Patrick, he had been gone about forty minutes, and he found Mr. Rice lying upon his back, as he had left him. He had thought that Mr. Rice was asleep, but could not swear but that he was dead. He saturated a sponge with the chloroform, put it in a cone made out of a towel, placed the cone over the mouth and nose of Mr. Rice, and left the room, returning about thirty minutes later. Such is a brief *resumé* of the testimony of Jones. His brother testified that he sent chloroform, and the delivery of a package of glass sent to Jones from Texas was shown by way-bills, delivery books, and testimony of express agents.

It does not appear that, in the minds of the physicians who performed the autopsy, or of others, there existed the idea that the death was, or might have been, caused by the administration of chloroform, until the suggestion came from the lips of Jones. In fact, all of the vital organs were removed from the body at the autopsy, and a transverse cut was made in each of the lungs, which were, if not casually, certainly not carefully examined, and put back for cremation with the mass of the body, and they were cremated. The other vital organs were retained for examination by chemists, and no conditions indicating the cause of death were thereby disclosed. Reference to this striking feature of the autopsy will later be made, but it is sufficient now to point out that it is by these three physicians that Jones was sought to be corroborated. This was the situation with which the district attorney's office was confronted: An autopsy had been performed; the lungs had been cremated; the other vital organs showed no indication of the cause of death; Jones then came forward with

the chloroform idea; and his story meant that the chloroform had been taken into the lungs.

The coroner's physicians then indulged in research and experiments; one of them making as many as 140 experiments upon birds and animals. The facts that these physicians were salaried officials, and that they received extra compensation—one over \$5,000, the other something less—for their efforts, the latter fact not being known to the jury when they found Patrick guilty, may be passed over without comment. The substance of their testimony and that of Dr. Witthaus may be broadly indicated as follows: The lungs were congested; the congestion was coextensive with the lungs; nothing but an irritant gas or vapor will cause such coextensive congestion; and chloroform is such an irritant.

The entire testimony of these three experts stands or falls with the theory that the congestion was coextensive, for Dr. Donlin himself testified that if the lungs had not been coextensively congested it would have been his opinion that the patient had died of heart failure from lobular pneumonia. So, it is seen that the question as to the existence of coextensive congestion constituted the keystone of the case. Professor Witthaus testified that the lungs were congested. Dr. Williams testified that the congestion was coextensive and intense, and that "the condition of the lungs struck me most forcibly." Dr. Donlin testified that the lungs were congested "all over," and that their condition was the only thing in the body recognized as the cause of death. Speaking of all of the vital organs, he said: "For the purposes of death, I say they were normal, with the exception of the lungs." Dr. Williams also testified that the other organs were normal. However forcibly they were impressed by the condition of the lungs, and notwithstanding such condition was the only thing recognized as the cause of death, the fact remains that the lungs were cast aside, and the normal organs were retained for examination. So, the vital point hinges upon the accuracy of the memories of the physicians as to the condition observed months before,

which did not seriously attract their attention or excite their suspicions at the time.

On cross-examination, Dr. Donlin, who had had charge of the autopsy, was asked whether he orally announced the result. He said that it was his custom to do so, and admitted that there might have been a number of reporters present. He testified that he did not remark, after the autopsy, that "the old man's time had come, and he died from old age, and that is all you can make of it." The defense produced a witness who was asked whether, in his presence and hearing, Dr. Donlin made the statement. He was not permitted to answer, the court saying that the foundation had not been properly laid for the introduction of such testimony. The idea seemed to be that in interrogating Dr. Donlin the defendant's counsel did not specify the person to whom the remark was made, although it was claimed to have been made to several persons. The court also refused to permit Dr. Donlin to be recalled. This evidence was of the most important character, and especially so in view of the circumstances attending the autopsy, to which reference has been made, and it was excluded by a ruling that scarcely attains to the questionable dignity of being based upon a technicality. Judge O'Brien says that if such a ruling were made in a police court, on a trial for sheep stealing, he is not sure that any appellate court would ever think of sustaining it. Surely here is a sharp wine that tastes of the grape-stone.

Other phases of the case require comment, not so much because of what was disclosed at the trial as because of light thrown upon the case by disinterested men of science, or, rather, men who have become interested solely through science,—who, after research and experiments undertaken from no mercenary motives, are practically unanimous in declaring that there was a grave error in respect of the expert testimony, and who, because of this, are movers in the undertaking to secure Patrick's pardon.

The defense, without great success, sought to elicit testimony to show the

impossibility of anæsthetizing a sleeping person without awakening him. Subsequent investigation of this question by the President of the Medico-Legal Society, has led him to the conclusion that this is impossible. He says: "There is not an unprejudiced medical mind in the world who would believe that if a towel, made into a cone, containing a sponge saturated with chloroform, was placed over the face of a living man who was asleep, that death would ensue if he was left alone for thirty minutes. The first struggle that the man made would dislodge and throw off the towel." Numerous experiments and declarations by eminent physicians are cited in substantiation of this conclusion.*

A feature of the case to which too little importance seems to have attached at the trial has taken a position of great importance in the light of subsequent investigation. This concerns the effect of embalming fluid upon the lungs. It has already been seen that all of the expert testimony was based upon the theory that the congestion was coextensive. It was also given and accepted upon the assumption that the embalming fluid did not enter the lungs. Dr. Donlin testified that it could not enter the lungs when injected into the brachial artery, although he admitted that he had investigated no authorities on the question. Prof. Witthaus said that the fluid would have no effect upon the lungs, that it would affect the lungs less than other parts of the body, that it would bleach the tissues, and that it would affect the lungs some.

A committee of the highest authorities on embalming, in the country, have investigated this question, and they state that embalming fluid can be injected into the lungs, before *rigor mortis*, through the brachial artery, where the blood is not removed.[‡] A committee of the Med-

* 24 Medico-Legal Journal, p. 32.

‡ See 28 Medico-Legal Journal, p. 127. See also 25 Medico-Legal Journal opposite p. 128, where it is shown that this same conclusion has been reached by the following eminent English surgeons and criminologists: Joseph Bell, F. R. C. S.; John Chiene, F. R. C. S.; William Turner, K. C. B., M. D., F. R. C. S.; Henry D. Littlejohn, M. D.; and Sir A. Conan Doyle, M. D.

ico-Legal Society, after considering the evidence in the case, and in response to questions propounded to them by the society, reported⁴ that the effect of embalming fluid of the "Falcon" brand, injected into the lungs two hours after death and before *rigor mortis*, would be to produce a condition "so like true congestion that a microscopical or bacteriologist examination would be required to distinguish between them." It is important in this connection to observe that Dr. Donlin, who performed the autopsy, was not permitted by the court to testify as to whether he used a microscope. The committee further say: "No reliance could be placed upon the conclusion formed or opinion expressed by a witness respecting the cause of death, as shown in the lungs, to be from chloroform or any other cause, without taking into consideration the fact of the body having been embalmed." Further: "We have no reason for changing the certificate of death as issued by Dr. Curry, and upon which the coroner permitted the cremation of Mr. Rice's body." It remains to be noted that Dr. Williams testified that the presence of chloroform was not determinable from the blood, because of the presence of embalming fluid.

There is much more, the consideration of which must be forborne because of the limitations of space. And yet it is thought that enough has been said to show that the wine press was hard wrought, apart from all knowledge imparted by those who have investigated the case subsequently to the trial. Certainly, in the light of such investigations the propriety of the conviction is a matter of serious doubt. Too much stress cannot be placed upon the varying stories recanted by Jones. And Patrick was convicted upon the testimony of such a man, corroborated—by what? Testimony of medical experts that nothing but an irritant gas or vapor will cause a congestion coextensive with the

lungs, and that chloroform is such an irritant. In their capacity as experts they were here reasoning from effect to cause.⁵ And what was the proof of the effect? Testimony of the physicians in their capacity as witnesses, who allowed the lungs to be cremated, and who retained the normal organs for examination, that the lungs were coextensively congested, and that this was the only condition recognized as the cause of death. And above all, the entire case of the experts was based upon the assumption that the embalming fluid did not enter the lungs, and this assumption is diametrically opposed to the consensus of opinion of many of the foremost physicians and embalmers of the world. To say now that there seems to be little evidence besides that of Jones, showing that death was due to other than natural causes, is not to cast reflections upon the experts, except in so far as such a statement entails the conclusion that they were mistaken. Their conclusions were circumscribed by the limitations of their knowledge, and it is by the exhaustive investigations of men of wider experience, and, it may be, more profound learning, that the apparent weakness of the case is disclosed.

Here is one of the many cases that

⁵ "In applying circumstantial evidence which does not go directly to the fact in issue, but to the facts from which the fact in issue is to be inferred, the jury have two duties to perform: First, by a rigid scrutiny of the evidence to ascertain the truth of the fact to which the evidence goes; and thence to infer the truth of the fact in issue. This inference depends upon experience. When we have ascertained by experience that one act is uniformly or generally the cause of another, from proof of the cause we infer the effect, or from proof of the effect we infer the cause. . . . Now, when this experience is of such a nature that it may be presumed to be within the common experience of all men of common education moving in the ordinary walks of life, there is no room for the evidence of opinion; it is for the jury to draw the inference. It is not because a man has a reputation for superior sagacity and judgment and power of reasoning, that his opinion is admissible. . . . But it is because a man's professional pursuits, his peculiar skill and knowledge in some department of science, not common to men in general, enable him to draw an inference where men of common experience . . . would be left in doubt." *New England Glass Co. v. Lovell*, 7 Cush. 321.

⁴ See 24 *Medico-Legal Journal*, pp. 1, 4. The following is the personnel of the committee: A. P. Grinnell, M. D., New York; Prof. H. S. Eckels, Philadelphia; Hon. W. H. Francis, Newark; Justice Herold, M. D., New York; James Moran, M. D., New York; Valdemar Sillo, M. D., New York.

go to justify the agitation for reform in the manner of taking advantage, in courts of justice, of the superior knowledge of scientists and other specialists. It has been frequently suggested that professional experts be excluded from the stand, and that there be appointed a board of experts, paid by the state, and chosen from among the most eminent specialists, whose duty it would be to hear the evidence touching scientific questions, and hand down its opinion, to be taken *ex cathedra* by the jury. That this would eliminate the unavoidable bias that attends an enlistment upon one side of a case is truly said by the advocates of this view. But the objection is interposed that such a course would constitute an invalid encroachment upon the prerogatives of the jury, in that it is exclusively the function of the jury to determine disputed matters of fact.

There is no magic in the words "witness" and "jury." An expert as an expert does draw conclusions from the evidence, although he is permitted to do so only where the question involved requires special knowledge not possessed by men of average intelligence.⁶ He does not the less perform what has been a duty of the jury since the dicasteries of Pericles, because he does not sit in the jury box; nor is he the more a witness because he does occupy the witness stand. His province is in fact to weigh evidence.

It is said that there is no such encroachment now because the jury are at liberty to disregard the opinions of the experts, and draw their own conclusions by reference, among other things, to the processes by which the experts arrived at their opinions. This is a perversity of reasoning. It means merely that the ex-

perts shall, to use the vernacular, be permitted to get away with it if they can, but that interference with the functions of the jury is obviated by the reservation to them of the right to weigh the evidence, their supposed incompetency to deal with which rendered the expert opinions admissible in the first instance.

One who sojourns in the law for long becomes so steeped in precedent that he has an antipathy for anything that bears the semblance of innovation. A due regard for precedent is good so long as the precedent is good. The conceded demerits of expert testimony deserve no championship. So, argument is given the appearance of a defense of the jury system. The jury are to determine the facts, and no interference with them shall be tolerated, it is said. The integrity of the jury system requires that, if advantage is to be taken of superior scientific knowledge, it shall be offered upon a partisan basis, in order that there shall be reserved to the jury the right to disbelieve and disregard it, upon the ultimate ground that it was offered upon that basis. And there is no invalid interference with the functions of the jury, so long as they have the right to form a disbelief in respect of that which they cannot comprehend. Such is the logic of the present situation.

The gradual process by which this evil has crept into the law accounts for the reluctance to eradicate it. "Whereas new things piece not so well," says Bacon, concerning innovations, "but though they help with their utility, yet they trouble with their inconformity. Besides, they are like strangers; more admired and less favored. All this is true, if time stood still; which contrariwise moveth so round, that a froward retention of custom is as turbulent a thing as innovation; and they that reverence too much old times are but a scorn to the new." It is but adding one voice to the clamor of a multitude, to express the hope that the near future will work a reform, to the end that it shall not be said that the Goddess of Justice is a Titania blinded by the magic liquid of slow evolution, and unable to see the grotesque shapes of those whom she caresses.

⁶ "It is not sufficient to warrant the introduction of expert evidence, that the witness may know more of the subject of inquiry and may better comprehend and appreciate it than the jury; but to warrant its introduction, the subject of inquiry must be one relating to some trade, profession, science, or art in which persons instructed therein by study or experience may be supposed to have more skill and knowledge than jurors of average intelligence may be presumed generally to have." *Ferguson v. Hubbell*, 97 N. Y. 513, 49 Am. Rep. 544. See also note 5, *supra*.

The Unwritten Law

BY A. M. HARVEY

of the Topeka (Kansas) Bar



THERE is a class of unwritten law which does not and cannot become written law, because it approaches so near the danger line that man dare not recognize it to the extent of publishing it and declaring it as a part of the positive law.

It is the unwritten law of the sea that a captain must go down with his ship. Men dare not write it into the contract, and nations dare not incorporate it in their navy or marine regulations; yet the sturdy tyrants of the sea know the law, and believe that to obey it betters their service; and there are few instances of its being disregarded.

It is the unwritten law of the army and navy that an officer shall not seek cover, or at least shall not show apprehension of danger to his person, in time of battle and in the presence of enlisted men or common sailors. In the Franco-Prussian war, nearly four thousand officers of the German army were killed, and the great majority of them gave up their lives because they believed in this law of conduct. In obedience to this law, Farragut bound himself to the mast, Lee rode to the head of his charging column at the bloody angle, and Lawton walked coolly in front of the line and was shot in the presence of his men.

We do not find this law in the army and navy regulations, and never shall, but our officers respect it and obey it.

The law of the right of revolution has been much talked about and much written about. Every intelligent citizen believes that he has the right, under certain conditions, to oppose the established government of his own land, and join in an effort to establish another in its place. Just prior to and during our Civil War there was much discussion in this country, by learned men on either side, of the right of revolution, and the "higher power" and the "greater law"

were appealed to with equal earnestness by Sumner on one side and Jefferson Davis on the other. However, their discussion has left this law as it has ever been,—undefined and unrecognized by courts and legislatures, but still existing as the only law that hangs the sword of warning and danger over those in authority.

The law justifying one person in the killing of another has required the serious consideration of every country. Every criminal code provides certain punishments for homicide, and many of them graduate the punishment with minute particularity, according to the circumstances of the killing, so that any one of six crimes may be involved in a single tragedy. Such codes also attempt to define what killing is justifiable and what is excusable, and, with their interpretation by the courts, attempt to describe the only conditions under which one human being can kill another and not be guilty of crime. Criminal codes have differed very materially in provisions of this kind. We have been unable to find a criminal code that has gone as far in attempting to describe the different situations that would constitute justifiable or excusable homicide as the Hebrew code. In fact, the Hebrew code almost stands alone in its recognition of man's desire to kill and his right to have that desire, and that climax of all satisfactions which comes to him who, under great provocation, slays another. It is not at all strange that in this branch there should be an extended code of unwritten as written law,—unwritten now and always to be unwritten, for the reason that the recognition given by its embodiment in the statutes would be taken as a license by dishonest men, and would result in harm rather than good. It is an unwritten law among the officers of the army that if a subordinate officer kills a superior officer because that officer has publicly degraded him by striking him, or by other action equally humiliating, then

the court-martial will not convict. During the Civil War, at Louisville, Kentucky, General Nelson said to General Davis, "How many men have you?" General Davis replied, "About"—giving an approximate number. Nelson said, "You an army officer and say 'about'! Why don't you *know* how many men you have?" And with that he struck Davis in the face with his glove. Davis shot and killed him, and the court-martial acquitted Davis.

The most common illustration of the unwritten law of homicide is where a person kills another, honestly and in good faith believing that that person has wilfully and deliberately imposed upon and degraded, either the man himself or some member of his family who was otherwise innocent and virtuous. In such a case a jury will not convict him of murder. The application of this law is so common that there is found much discussion of it in newspapers and among men generally. Criticism of juries for acquittals in cases of this kind is frequently heard among men whose conception of the law is such that they do not understand it to be the duty of a jury to consider any rule of action except that found in the statute books. One or two illustrations taken from the records of the courts of our state might not be out of place.

A certain man resided in one of our cities of about three thousand population. His family consisted of himself, his wife, and two daughters. The younger daughter was the pet of the family and the pride of her father. She married a well-to-do business man whose habits of life made him give more thought and consideration to his business than to his family. The young woman was musical, and with the consent of her husband she associated freely with other musicians, and attended musical entertainments with her acquaintances, while her husband devoted himself to money making. She went to a neighboring town to attend a musical festival, and, before she returned home, scandalous talk was there giving a detailed account of certain unseemly conduct on her part. Her husband, who was too busy to give the matter much

attention, simply informed her father that she could not return to his home, and so she went to her father. The young man who was associated with her in the scandalous conduct came to the hotel of their town, and took up his abode there, and talked freely to different persons about what he had done, and, among other things, boasted that he would have a talk with the young woman's father, and that he would take care of her. The father sent him word to stay away, and at the same time armed himself with a revolver. The next day, as the father was coming down the main street of the city, he met this young man, who started to approach him with a self-confident, almost insolent, air. The old man struck him over the head with a heavy cane, and then, producing his revolver, shot him dead. No weapon of any kind was found on the dead man's body, and there was no evidence whatever of an attack being made by him, or of any of the circumstances that might establish justifiable or excusable homicide. The father was indicted, and the case came on for trial. His attorneys planned that they would argue to the jury that he was not responsible for his action because of temporary insanity, but the old man was hard-headed, and he insisted upon taking the stand, and there he told the jury how much he regretted the killing, but at the same time he said that he never was more responsible in his life, and that he knew perfectly well what he was doing, and, more than that, if that part of his life could be lived over again, he would not make his conduct different, nor hesitate to kill the man. The story of the provocation and this story of the killing went to the jury, under the usual instructions of the court. After short deliberation the jury returned a verdict of "not guilty."

Another recent case was one wherein a young man of promise and of high ideals had the misfortune to have a brutal father. Certain brutal and inhuman conduct of his father toward his younger sister was related to the boy, and he deliberately walked into another room where his father was, and killed him. None of the circumstances of justification or excuse as laid down in the stat-

utes were present. All of the facts were presented to the jury, and the jury was instructed on all of the degrees of murder and manslaughter. After deliberation a verdict was returned, finding the boy guilty of the lowest degree of manslaughter. The court, being impressed with the same consideration as the jury, paroled the defendant, so that he did not have to spend a day in prison on account of the killing, and the court's action in this matter was approved by our supreme court.

Much has been written and much discussion has been had upon the failure of the jury to acquit on the urging of the unwritten law in the Thaw case. The facts did not bring the case within the law that moves juries to acquit the killer. Thaw was dishonest and licentious, and himself indifferent to the virtue of his wife. The able lawyer conducting the defense had presented evidence making an unqualified verdict of guilty impossible, and then, to avoid a verdict of not guilty on the ground of insanity, he "pulled for the shore," and made a gallant effort to secure a general verdict of not guilty. He should not be censured for his zeal; neither should the jury be especially praised for detecting the fallacy of his argument.

Court records are full of instances of acquittal of persons charged with murder, where no positive law can be found that would support the verdict. If we are right in our conclusions that the positive law is a child of the unwritten law, and that law is something to be discovered and administered, instead of something to be made and administered, then we may well withhold our criticism of juries in cases of this kind.

When we say that it is the province of the jury to pass upon the facts of a case, we have not told the whole truth. If this were true, then only special questions would be submitted to a jury, and the general verdict would not be required. We often hear the court instruct

the jury that, to determine the weight of the evidence, the jurors may take into consideration their knowledge of similar transactions common to the generality of mankind. Requiring a general verdict based on the law as given by the court and the testimony as learned from the witnesses, in actual practice, requires the jurors to interpret and apply the law as given by the court in harmony with that knowledge of the law common to the generality of mankind. Our statutory provision making the jury the judge of the law as well as the facts in libel cases is a recognition of this function of a jury, which is exercised in a greater or less degree in every case when a general verdict is rendered.

If the rendering of a verdict of guilty in a given case would shock the moral sense of justice in the minds of the jurors, then we ought not to expect or demand a verdict of guilty. Emerson has said: "Things refuse to be mismanaged long. Though no checks to a new evil appear, the checks exist and will appear. If the government is cruel, the governor's life is not safe. If you tax too high, the revenue will yield nothing. If you make the criminal code sanguinary, juries will not convict."

In conclusion, it may be suggested that if one would seek to establish a written law, he should first examine the unwritten law upon which it must rest, and, if this does not approach his ideal, he must exert his power upon the conditions that necessarily bring about the law. If he can abolish poverty, oppression, and hard conditions on the one hand, and ignorance and mental deformity on the other, then he may abolish the laws that they called into existence, and other and better laws will spring up in their stead. This is the true solution of the reformation of the law.—*From an Address delivered before the Kansas State Bar Association, January 12, 1911.*

Criminal Slang

BY JOSEPH M. SULLIVAN, LL.B.,

of the Boston (Mass.) Bar



WHAT is slang? Slang, briefly defined, is low, vulgar, and unauthorized language; a popular but unauthorized word, phrase, or mode of expression; low, popular cant; also the jargon of some particular calling or class in society; as the slang of the theater, of colleges, sailors, gypsies, thieves, and various other types that compose the dregs and cast-offs of society. The "patter" of the "Bowery tough," "Cockney footpad," or "Paris gamin" is a subject full of vital human interest to the student of philology not averse to researches in the labyrinths of that part of human society known as the "underworld."

Slang had its birth in "criminality." Take, for example, the speech of gypsies and Magyars. The language of these vagabond races was intelligible only to the immediate members of each individual tribe; as a class they were decidedly criminal, and from their argot sprang ancient criminal slang. Their slang language is the same to-day as it was in the fourteenth century, and is still unscathed by the mutation of time. The criminal classes of India use warning cries, and employ cipher marks to tell subsequent prowlers of the conditions of the neighborhood; and in this respect they are similar to our "yeggmen" of the present day in America, a class whose activities have baffled the keenest minds of the United States government, and in the suppression of whom as a class the Postoffice inspectors have ignominiously failed.

Modern criminal slang has for its distinguishing features expressiveness and applicability. It has taken our modern civilization to make the present-day criminal and evolve his peculiar dialect. Many of the slang expressions which are in current use among the American criminals of the current day will, be-

cause they convey so much truth in a "pat" form, eventually find a place in all the dictionaries. The peculiar language used by the underworld is, to my mind, due to their perverted but acute mentality.

Just as the "yeggmen" finds a burglar's kit and dynamite an essential preparation for blowing open safes, so the criminal finds his own slang a most convenient and useful mode of expression because of its brevity and its usefulness in conveying so many ideas in a very few words. To-day, on all sides, we hear the slang expression of the deft, furtive pickpocket or "dips," the vocabulary of the "yegg" or "boosters," the confidence man, the counterfeiter, and of every class and kind of criminal which is to-day operating in America.

Slang is too big, too vital, too much a part of language (and a living part), for us to ignore it,—words scribbled in the margin of life's page. Some of these survive and creep into the text. Its origins have always mystified the savant, and its use amused the ordinary mortal. Learned societies are to-day puzzling their wits over the "Jobelin of Villon," trying in vain to decipher what that prince of crooks meant by some of his astonishing rhymes. Many of his meanings are to-day utterly unknown. Victor Hugo thought criminal slang worthy a chapter in "Les Miserables." Every earnest investigator of the underworld agrees with him. This subterranean dialect, obscure, ingenious, wonderfully poignant, which passes muster everywhere as a *lingua franca* among criminals, is surely worth more than a casual study.

To everybody the subject appeals as interesting. But to certain classes it is vital. I mean all detectives, policemen, lawyers,—in short, all persons in any way whatever connected with the administration of justice. Crooks can converse at will in the presence of the police, or can write to each other without at all

divulging to the uninitiated their meaning. Justice might less often miscarry, were the subject more thoroughly and generally understood.

Perhaps you will ask why the underworld uses a language the possession of which arouses instant suspicion and perhaps immediate detection. The average policeman in all of our large American cities is not deeply versed in criminal slang and its meaning; he is what the underworld calls a "harness-bull," to wit, an officer in uniform, and the average criminal treats his knowledge with contempt. The prevailing ignorance of the meaning of criminal slang among police officers, detectives, sheriffs, and other officials intrusted with the enforcement of the criminal laws is due to the fact that the meeting of thieves and police is naturally a hostile one; the culprit is in fear, and is overawed by the weight of authority. This is not calculated to inspire any confidence on grounds of friendship, because to learn the peculiar argot of criminals one must mix with them socially and become a hail-fellow well met, and in this way become familiar with their language and mannerisms. Then again, the policeman doing patrol duty on the streets of our large cities is dressed in full uniform and is a marked man, and consequently is shunned by all members of the light-fingered fraternity.

The plain-clothes men have a slightly better opportunity to obtain a knowledge of criminal slang and thief vernacular. If a thief has experienced a bad fall (an arrest), he is put to his wits' end, and, as he is naturally resourceful, he begins at once to get on the right side of the arresting officer. This is where the application of "salve" (getting on the right side of the arresting officer) begins; and by reason of this enforced familiarity the officer might pick up a few words of slang here and there; but the knowledge he gains in this way is never a burden to him. Then again, thieves from different parts of the United States have different dialects and colloquial sayings, and a thief from the Pacific Coast would use a great many words that are wholly unknown to the New York pickpocket. Of course, after a "meet" of Western

thieves with Eastern thieves an interchange of slang and "pat" words follows, and one readily picks up the cant words and sayings of the others. An examination and critical study of criminal slang will, to my mind, prove instructive and entertaining to the reader. We will take for the first illustration the pickpocket, who is called in the slang language "a gun." A "gun" is a thief who does not use force,—somewhat of a paradox, but nevertheless true; and in this manner he is distinguished from the "gorilla," the strong-arm highwayman, who holds up people on the highway, and relieves them of their valuables.

A "grafter" is a thief, in the language of criminals. This meaning will probably be adopted by honest men, and find a place in all the dictionaries. Then too, the term "jail arithmetic" is so applicable to our embezzling bank officers, conscienceless financiers, swindling contractors, *et id omne genus*, that it deserves a place in our literature.

That criminals consider all persons holding office under a political government "political paupers" should merit the attention of civil service commissions.

A complaint or charge of crime is a "rap," and the complainant is the "rapper." The one whose property is stolen is the "sucker," and the judge is called a "beak."

A "fall" is an arrest, and "fall money" is the money which is used to liberate a man from custody. "To spring a man" is to bail one out who is under arrest; and to help square the "sucker" and get a man off clear from any charge of crime, the "underground wires" must be used. A pocketbook is a "poke," and a man who jumps his bail bonds, becoming a fugitive from justice, is a "lamaster."

The thief who steals your pocketbook is the "wire" or "tool," and a gang of pickpockets consisting of three or more people who travel together to steal is called a "mob." A "swell mob" is a gang of first-class pickpockets who can hire first-class legal talent, and have good financial backing.

When a man is convicted of crime he is "settled," or, to use the English

phrase, "unfortunate." If a girl loses her fellow through a court sentence she is "divorced," in the language of the underworld.

A "swell mouthpiece" is a very good lawyer, while a very bad one is called a "shyster."

A pickpocket is frequently called a "dip," and in Western states a "cannon."

A shoplifter is called a "booster," or "hois-ter" or "hyster," and an exceptionally smart one "a swell booster." A green-goods man when plying his trade is said to be "out of the spud." Store thieves who steal jewelry are called "penny-weighters," while thieves who tap store tills are called "damp-getters," and when working are said to be "out of the heel."

Thieves who steal diamonds or other precious stones from the person are called "propgetters" or "stone getters." A woman thief is called a "gun-moll," and a male thief who makes a specialty of robbing women is called a "moll-buzzer." A safe blower is called a "gopher man," "peterman," or "yeggman," and "gerver," and an empty safe is called "bloomer." A second-story worker who breaks and enters dwelling houses is called a "houseman," "porch-climber," and "flat worker."

"Turn out" is to discharge from arrest and put a man on the street.

A woman who decoys men, and then her accomplice (alleged husband) black-mails them, is called a "badger worker" or "panel worker."

The go-between of lobbyists, who buys up legislators, is called the "gravel-train," because he has the "rocks" whereby he can debauch legislators; and the lobbyist himself is known to the criminal world as a "dress-suit burglar."

The thief who robs drunks is called a "lushtoucher," and the stylish hotel beat is called a "baron." A lodging house is called a "doss-house," and to sleep is to "doss."

A restaurant is a "dump" or "beanery," and a convict who works the churches and is insincere in his profession of religion is termed a "mission-stiff." A minister is called a "sky-pilot,"

and a Catholic priest is called a "Gal-way" or "buck."

A prison turnkey is alluded to as a "screw," and prison food is called "steamed grub."

"Mugged" is photographed, and "stood up" is to be placed in the line at police headquarters for identification, and exposed to the gaze of probable "rappers."

An "Irish Club House" is the police station, and an "ink pot" is a resort for low characters.

A "thimble" and "turnip" is a watch, and counterfeit money is "bad dough." Diamonds with flaws are called "bum rocks," and a "fixer" is a man who looks after the interests of the man who is arrested, squares the "sucker," hires the lawyer, and attends to all necessary details.

A chief of police is a "buzzard" or mean person, and a "good fellow" is a thief, man or woman, who pays his bills.

A "prison stool pigeon" is a "trusty psalm singer," or "pig," and "stick and slug" means "keep together and fight."

"Slinging the lingo" is to hold a conversation in slang, while a "mush" is an umbrella, and a "wipe" is a handkerchief.

"Track 13 and a wash out" is a life sentence in a Western penitentiary, and "Salt Creek" means death in the electric chair.

"Anchor" is a stay of execution of sentence, and a "life boat" is a pardon.

"Making the boast" is getting by the pardon board and obtaining a pardon. "Shake down" is paying for police protection against your will, and a "dead criminal" is one who has become discouraged, reformed, or given up grafting.

"Rat" is a cheap thief who squeals on "fall money," and refuses to pay his bills.

These are but a few specimens out of hundreds which might be given. The vocabulary of criminal slang is large; and, strangely enough, there runs through it a vein of good-natured humor.

Cross-Examination of the Perjured Witness

BY FRANCIS L. WELLMAN

Being the part of Chapter IV, from his remarkable book, entitled "The Art of Cross-Examination," copyright 1903, by MacMillan Company, New York, and reprinted in CASE AND COMMENT by special permission of the author.



TWO famous cross-examiners at the Irish bar were Sergeant Sullivan afterwards Master of the Rolls in Ireland, and Sergeant Armstrong. Barry O'Brien, in his "Life of Lord Russell," describes their methods. "Sullivan," he says, "approached the witness quite in a friendly way, seemed to be an impartial inquirer seeking information, looked surprised at what the witness said, appeared even grateful for the additional light thrown on the case. 'Ah, indeed! Well, as you have said so much, perhaps you can help us a little further. Well, really, my lord, this is a very intelligent man.' So playing the witness with caution and skill, drawing him stealthily on, keeping him completely in the dark about the real point of attack, the 'little sergeant' waited until the man was in the meshes, and then flew at him and shook him as a terrier would a rat.

"The 'big sergeant' (Armstrong) had more humor and more power, but less dexterity and resource. His great weapon was ridicule. He laughed at the witness and made everybody else laugh. The witness got confused and lost his temper, and then Armstrong pounded him like a champion in the ring."

In some cases it is wise to confine yourself to one or two salient points on which you feel confident you can get the witness to contradict himself out of his own mouth. It is seldom useful to press him on matters with which he is familiar. It is the safer course to question him on circumstances connected with his story, but to which he has not already testified

and for which he would not be likely to prepare himself.

A simple but instructive example of cross-examination conducted along these lines is quoted from Judge J. W. Donovan's "Tact in Court." It is doubly interesting in that it occurred in Abraham Lincoln's first defense at a murder trial.

"Grayson was charged with shooting Lockwood at a camp meeting, on the evening of August 9, 18—, and with running away from the scene of the killing, which was witnessed by Sovine. The proof was so strong that, even with an excellent previous character, Grayson came very near being lynched on two occasions soon after his indictment for murder.

"The mother of the accused, after failing to secure older counsel, finally engaged young Abraham Lincoln, as he was then called, and the trial came on to an early hearing. No objection was made to the jury, and no cross-examination of witnesses, save the last and only important one, who swore that he knew the parties, saw the shot fired by Grayson, saw him run away, and picked up the deceased, who died instantly.

"The evidence of guilt and identity was morally certain. The attendance was large, the interest intense. Grayson's mother began to wonder why 'Abraham remained silent so long, and why he didn't do something!' The people finally rested."

The tall lawyer (Lincoln) stood up and eyed the strong witness in silence, without books or notes, and slowly began his defense by these questions:

"Lincoln. And you were with Lockwood just before and saw the shooting?"

"Witness. Yes.

"Lincoln. And you stood very near to them?

"Witness. No, about 20 feet away.

"Lincoln. May it not have been 10 feet?

"Witness. No, it was 20 feet or more.

"Lincoln. In the open field?

"Witness. No, in the timber.

"Lincoln. What kind of timber?

"Witness. Beech timber.

"Lincoln. Leaves on it are rather thick in August?

"Witness. Rather.

"Lincoln. And you think *this* pistol was the one used?

"Witness. It looks like it.

"Lincoln. You could see defendant shoot,—see how the barrel hung, and all about it?

"Witness. Yes.

"Lincoln. How near was this to the meeting place?

"Witness. Three quarters of a mile away.

"Lincoln. Where were the lights?

"Witness. Up by the minister's stand.

"Lincoln. Three quarters of a mile away?

"Witness. Yes,—I answered *ye twiste*.

"Lincoln. Did you not see a candle there, with Lockwood or Grayson?

"Witness. No. What would we want a candle for?

"Lincoln. How, then, did you see the shooting?

"Witness. By moonlight! (defiantly).

"Lincoln. You saw this shooting at 10 at night, in beech timber, three quarters of a mile from the lights,—saw the pistol barrel, saw the man fire, saw it 20 feet away, saw it all by moonlight? Saw it nearly a mile from the camp lights?

"Witness. Yes, I told you so before.

"The interest was now so intense that men leaned forward to catch the smallest syllable. Then the lawyer drew out a blue-covered almanac from his side coat pocket, opened it slowly, offered it in evidence, showed it to the jury and the court, read from a page, with careful deliberation, that the moon on that night was unseen and only arose at *one* the next morning.

"Following this climax Mr. Lincoln moved the arrest of the perjured witness as the real murderer, saying: 'Nothing but a *motive to clear himself* could have induced him to swear away so falsely the life of one who never did him harm!' With such determined emphasis did Lincoln present his showing that the court ordered Sovine arrested, and under the strain of excitement he broke down and confessed to being the one who fired the fatal shot himself, but denied it was intentional."

TO BE CONTINUED.

The old severity of the penal code has long since passed away, yet the ancient procedure with all its loopholes of escape and all the safeguards and presumptions in favor of the criminal is, to a large extent, still retained. It is largely inapplicable to present conditions, and in the interest of justice, as well as social order and security, it ought to be modified, as it has been in England, where it originated.—Prof. James W. Garner.

Criminal Law Reform

*Suggestions Contained in Addresses Delivered by Prominent
Members of the Bar on This Important Subject.*



By Hon. F. H. Norcross, Chief Justice Supreme Court Nevada:

FOR centuries the world has proceeded upon the theory that the way to deal with crime was to impose severe punishment upon the offender. Long sentences, to be served out in prisons, where only hardship and cruelty were to be expected, were considered the proper thing. Terror was to be the force that was to hold crime in check. It has taken the world many centuries to make at last a beginning in experimenting upon some theory in dealing with crime, other than that of vengeance. Gradually, more and more, during the last quarter of a century, different ones intrusted with the administration of justice and the enforcement of law concluded that it might be worth while to try the experiment of injecting a little more of intelligent and well-directed humanity into the methods of dealing with offenders. When these methods were tried, usually conditions were found to improve.



By Hon. Horace E. Deemer, Chief Justice Supreme Court Iowa:

PENOLOGISTS have demonstrated that it is not the severity of punishment which acts as a deterrent from crime. Certainty and celerity of the processes of the law are really the greatest discouragement to the criminal classes. When the offender has been convicted of his wrong to society, then may society justly show mercy; then should it begin an investigation as to its own responsibility for the conditions which brought about that wrong; and then should it undertake the solution of the problem of how to treat the culprit. Punishment should be made to fit the criminal, and not the crime; and he whose liberty is a menace to society should be restrained just so long as it is unsafe to the community for him to be given his freedom. Indeterminate sentences have been a dismal failure, and the time has arrived for that sort of punishment which commends itself to a humane, intelligent and responsible people. Practically all of the leading penologists of this country now favor the indeterminate sentence as the only reasonable and entirely just method of punishment; and the scheme is worthy of the best thought of all associations having at heart the interests of our common humanity.



By Gerard Brandon, Esq., of Natchez, Miss.:

IT is in the infliction of penalties that we find the most glaring inequalities in the application of our criminal laws. Most misdemeanors are punishable with fine or imprisonment, in the alternative. Usually the fine is imposed (except in aggravated cases or where the accused is specially low in the social scale),—the defendant to stand committed till the fine and costs are paid. The offender with more money or friends pays his fine and is released; the defendant without money or friends serves the jail sentence. Even where the offender whose means are small manages to pay his fine and costs, the hardship upon him is much greater than where the same fine is imposed upon one with greater ability to pay. Yet how seldom, in considering the degree of punishment to be inflicted and the amount of fine to be imposed, does the magistrate think of the ability of the accused to pay. The imposition of a fine of \$5 on one man may be a more severe punishment than a fine of \$500 on another. The only means by which an equality of punishment in cases of misdemeanors can be secured is by so altering our penal statutes as to abolish fines altogether, and to impose jail sentences only. Then all men will truly be equal in the sight of the law. . . . It is just as easy (or just as hard, if you prefer) for one man as another to go to jail; it is not just as easy for one man as another to pay a fine.

By President Taft:

THERE is no subject on which I feel so deeply as upon the necessity for reform in the administration of both civil and criminal law. To sum it all in one phrase, the difficulty in both is undue delay. It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization, and that the prevalence of crime and fraud, which here is greatly in excess of that in European countries, is due largely to the failure of the law and its administration to bring criminals to justice.



By Emanuel M. Grossman, Esq., of St. Louis, Mo.:

OUR criminal law is, of course, the great cause of popular discontent. To it, more than to any other department of the law, may be charged the growing disrespect of all law and the loss of prestige of the lawyer. It is a most deplorable fact, and to the great shame and discredit of our civilization, that in this country, at this advanced age, the statistics show more homicides in proportion to population than in all the principal countries of Europe put together. It is said that we are guilty of about nine thousand homicides annually, with only little more than one out of every one hundred avenged by legal execution. But such lax treatment of crime is not altogether to be charged to the law. The people themselves, who, through the jury, fix the standard of conduct, are largely to be held accountable. . . . But the technicalities of the criminal law are chiefly responsible for the deplorable state of public disapproval. The vicious doctrine of presumed prejudice—presumed, as in this state from errors of even insignificant triviality, even from error committed by a stenographer in the misspelling of a word, or in the omission of the article "the," though the crime with which the defendant was charged and found guilty may have been the most atrocious known to our civilization,—has brought upon our law and courts such a storm of disapproval that lawyers find it futile to attempt to allay it.



By North T. Gentry, Esq., of Columbia, Mo.:

A SERIOUS defect in our Criminal Code is the abuse of the law on the subject of continuances, and on the subject of change of venue. It often happens, indeed in some countries it is the practice, for the defendant in a criminal case who is out on bail and who is interested in dodging a trial, to procure as many continuances from the regular judge as possible, and, when his last application for a continuance is overruled, to ask for a change of venue on account of the prejudice of the judge, and thereby secure another delay. After the new judge is called in, another delay is asked for on the ground that the defendant has just then discovered that the inhabitants of the county are so prejudiced against him that he cannot have a fair and impartial trial.



By Hon. M. C. Sloss, Associate Justice Supreme Court California:

THE public cannot successfully cope with the perpetrators of crime, unless it has the right to call upon them to either give a statement of the facts, or run the risk of having an unfavorable inference drawn from their failure to give it. Nor would there be danger of injustice from the adoption of this change. An innocent man could rarely, if ever, be harmed by taking the witness stand to declare his innocence. "It must not be forgotten," said a prominent New York lawyer in a recent address, "that the rule that a defendant in a criminal case cannot be compelled to incriminate himself was enacted at a time when the defendant was not allowed to be a witness in his own behalf." And he added the opinion that "nine out of ten crimes go unpunished because of the tradition, which found its birth in the Dark Ages."

Side by side with the limitation of the right of the accused to stand mute should go the absolute prohibition of testimony or confessions obtained from persons under arrest, as the result of private questioning by officers of the law. The horrors of the "third degree" are the direct result of the rule prohibiting the prosecution from calling the accused as a witness, or basing any argument upon his failure to take the witness stand in his own behalf.

Editorial Comment

A brief review of current topics



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Edited by ASA W. RUSSELL.

Genius and Jails.

GENIUS is generally erratic, and often has a fine disregard for conventionalities and laws. This attribute has led many a man, highly endowed by nature, to a prison cell. A few months ago it was discovered that a young man in a Western penitentiary was a gifted poet,—a more than potential Villon or Wilde,—one whose lines suggested the fiery rapture of Swinburne's verse. He had been imprisoned, when but nineteen years of age, for stealing a small sum of money at a time when he was starving. Executive clemency was asked and obtained in his behalf.

Another prisoner showed himself able to produce in a far northern latitude

wonderful results with lemon trees. He succeeded in raising, in the prison yard, lemons weighing two or three pounds. For him also a pardon was asked.

Another penitentiary contained a mathematical genius who claimed to have discovered "the reduction of the general equation of the tenth degree to an equation one degree lower." If he has made this discovery, hitherto believed impossible, he has made a name for himself as great or greater than any mathematician, living or dead.

Such instances as these bring up a delicate question as to society's duty to a criminal under such circumstances. Having found a genius in a prison cell, shall it leave him there to work out his time? Or shall it open the doors on the ground that his brilliant writings or rare discoveries have discharged his debt and "assoiled his shame?"

It is clear that any man who has been reasonably punished, and who is willing and anxious to do better, ought to be given the opportunity. While genius ought not to confer immunity from punishment, it may well be considered in abridging the penalty of the law,—especially if the offender is repentant and willing to try to make the most of himself.

Playing the Game.

AT the recent session of the New York State Bar Association, Honorable Elihu Root repeated the statement which he made a year ago, "that we are too apt, at the American Bar, to act as if in litigation we were playing a game, with the judge as referee of the game." This criticism is doubtless to a considerable extent deserved. Practically, the courts are a battle ground for the lawyers. There is no technicality too trivial for some attorneys to take advantage of it in defending their clients. The guilt or innocence of the accused is often given little thought by the opposing counsel, or is treated as a minor issue.

The prosecutor and his associates feel it is their duty to convict. If they fail, it is a personal defeat. The attorneys for the defense are hired to free their client. If they lose, they feel that they have not earned their money, or at least have lost a part of that valuable asset called professional reputation. In other words, it is a game between prosecution and defense, in which life, liberty, and justice are incidentally involved.

Such conditions are highly prejudicial to the best interests of the legal profession and of the public. The field of criminal practice is one of notable opportunity. It invites to eminent service, and offers special distinctions. It rests with the responsible members of the Bar to reform this evil, so far as it may exist, in both criminal and civil actions. In the words of Senator Root: "Only the Bar itself can cure that, and realize the highest usefulness of a noble profession by devoting its learning, its skill, and its best effort to securing for every suitor, as promptly as possible, a fair and final judgment on the merits of his case."

The Evolution of Portia.

NOTHING is more significant of the modern feminine invasion of the precincts of the law than the recent demand for a court to be conducted entirely by women, and for the purpose of trying cases wherein women alone are interested. It is urged that such a tribunal could be maintained successfully, especially in our large cities, where there are not a few women who are engaged in the practice of the law. There would be a woman on the bench, women to plead at the bar, women in the jury box, and women litigants or culprits. Whether male spectators would be tolerated, or unceremoniously ejected by the Amazon attendants, has not been announced.

This proposition, if seriously made, seems to have little to commend it. Our courts are open to men and women alike, and the rights of the latter are as carefully protected as those of the former. In fact a woman, especially if attractive, has always been dealt with in a most

chivalrous manner by our juries. There is no more reason for basing a separate jurisdiction on the distinction of sex than there would be on the ground of nationality.

Speeding up the Legal Machine.

AN Ohio judge of the common pleas court has established a new world's record for granting a divorce.

Reno judges held the speed title for some years, claiming that divorces could be secured in the courts of that city in five minutes.

Then a Montana judge jumped into the limelight, demanding the speed title with a three-minute mark. His record stood for some time.

In the Ohio case it took exactly two minutes and a half to send the complaining benedict under the wire, free.

No time was wasted. Two witnesses were sworn in a twinkling of an eye. They testified in a few words. Statutory grounds were set up, and the judge held them to be sufficient for a decree. The case which had been in progress was interrupted but three minutes, and a divorce had been granted.

Idaho State Bar Association.

THE last meeting of the Association held at Boise from January 12th to 14th is reported to have been the best in its history.

A committee was appointed to draw bills relating to needed reforms in practice and procedure, which will be presented to the present session of the legislature. It is proposed to reduce the time within which a defeated party may appeal, from a year to sixty days, so that when real property is involved a cloud will not hang over the title so long. It is also urged that the practice of having an abstract of the evidence made by attorneys for use on appeal be discontinued, and that, instead, the transcript be sent up by the clerk, and that the attorneys then make a brief covering the points of law.

The Bar also favors an increase in the salaries of judges of the supreme court,

and an increase in the number of judges from three to five.

Several excellent addresses were given and followed by interesting discussions. General Frank Martin, of Boisé, is the new President and B. S. Crow, of Boisé, was re-elected secretary.

It is likely that the Association will meet annually hereafter, instead of biennially.

Euthanasia and the Law.

A FEW months ago an eminent professor in a prominent medical college declared that suicide, and a deliberate hastening of death by a physician, are justifiable. He asserted that a person suffering from an incurable disease is justified in taking his life and putting an end to the torture. He declared that he did not believe that such an act would be held against the suicide in the future state.

Thereafter a physician in a Western city advocated that a dose of prussic (otherwise hydro-cyanic) acid be given as a "mercy tablet" to all idiots and to the hopelessly insane.

The question is presented in a modified form by those who do not believe in the right of one person to kill another to end his agony, but who do believe that we should avail ourselves of anodynes, even though their use in a hopeless case may shorten the brief remaining span of life.

Suicide has little to commend it. If it be conceivable that a sane man should wish to destroy himself, the act would partake more of moral cowardice than of Stoic fortitude. No man has a right to refuse to perform his allotted earthly pilgrimage, or to decline to undergo its disciplinary sufferings, however harsh; nor can he be sure that they will not overtake him in the after-world. It is the height of impiety for the creature to fling back the boon of life to his Creator as a worthless gift. But although the law denounce this offense, it cannot prevent it; nor can the dead be punished.

Just as people will continue to take their lives if they want to, in spite of all laws that are passed, so they will continue to cling to life, however wretched

or desperate their condition, in spite of the theories of others that they ought to pass out quietly and peaceably. Human beings are entitled to life just as long as human skill is able to maintain it. Aside from the judgments of a court of justice, who has a right to say that a human being has forfeited his life? Even the lives of the insane may not be as hapless as we deem them, or without their hidden meaning.

There is much to commend the use of powerful anodynes to mitigate hopeless suffering. It is said that General Grant's last days were made more comfortable by the use of drugs, which very likely actually shortened his life, and that he requested his physicians to use them.

What ought the physician to do in similar cases? Should he give the medicine with the primary object of relieving the pain, and risk fatal consequences? If the patient dies, would the law exonerate the physician? Would the court and jury presume, as in the case of a serious surgical operation, that the intent was merciful, and not homicidal? Probably, where the parties are all reputable it would be presumed that the exigencies of the case required the medication, and that the death was the incidental, and not the premeditated, outcome.

The strictly private execution of condemned persons in their cells, under the influence of an anæsthetic, has also been strongly urged, and is doubtless a humane suggestion. It would at least cast over the death of criminals some touch of decency and decorum, and do away with the awful ceremony and disgusting apparatus of violent death. A man about to pay the last stern penalty of the law is not a thing to exult and gloat over; nor ought his passing to be made a public spectacle.

Women's Night Court.

THE women's night court, recently established in New York city, may be described as the familiar police court with a restricted scope.

A physician and a nurse supplement the judge. Women charged with vagrancy, intoxication, and public immor-

ality will be the court's principal concern; and culprits will go to prison, or to hospital, according to their deserts, or as public policy may determine.

The women of the street make up the greater number of the night offenders. Their cases present the most serious problem. Volumes have been written concerning these unfortunates. But one will search far for a book or pamphlet that even suggests a remedy or cure.

"The probation system, reinforced by such excellent institutions as Waverly House," says a writer in the *Boston Transcript*, "has been made the basis of much well-intended effort; but it is noticeable that even the philanthropic workers who do most through such agencies come at last to regard the woman of the street as a sort of psychological phenomenon, which they describe in their writings, and pity or condemn as the case may be, but for which they do not pretend to assign a preventive. Such writings not infrequently conclude with general remarks about 'the oldest profession in the world,' and let it go at that.

"The recent amendments to the New York law provide for physical examination of women thus arrested, and their commitment to hospitals for not less than one year, in cases where it appears that their condition is a menace to the community. The legislative commission on whose recommendation this feature of the law was enacted frankly stated that the suggestion was made only as a beginning. It did not predict the ending, but the tone of its report points distinctly in the direction of the system in vogue in many foreign cities, of licensing and registering the Magdalens of the community,—an idea which would run counter to many of the settled precepts of the American code of morals."

However, such specializations in legal procedure as are exemplified by the night court should engage the sympathetic interest of all who would promote social betterment.

The Court of Domestic Sorrows.

[[N] New York a court of domestic relations has been created by statutory provision. The matter has been specifically established to deal with cases of abandonment. With the increase in the economic pressure, and the uneasy shifting to and fro of a large alien population, cases of this kind have developed with disquieting frequency. The court will make a sincere endeavor to effect reconciliation wherever possible. In those numerous cases where the continuing absence of the husband and father puts any such adjustment out of the question, the court will administer justice to the extent that is practicable, and will make provision for the abandoned wife and deserted family. Briefly summarized, the results to be accomplished by establishing one part of the magistrates' court for "domestic relations" cases will be: The expedition of this branch of the police court business; the protection of women and children from contact with crime and criminals; the more orderly, painstaking, and sympathetic consideration of their stories, and the opportunity, by reason of better information, for both magistrates and their probation officers to get into some degree of personal touch with the families who are in trouble. It is also planned to establish a branch office of the superintendent of the out-door poor, in the building in which is located the "domestic relations" court, so that this official may work in harmony with the magistrates. Facilities will be given also for representatives of charitable societies to render their aid as conditions permit; and these latter will, no doubt, be of considerable assistance by way of investigating details that the magistrates, even with such probation officers as may be assigned to them, cannot give attention to.

A court of domestic relations cannot fail to make for greater humanity, and greater intelligence in classes of cases that particularly call for those qualities.



Among the New Decisions

Brief comments on recent decisions of our Supreme Courts

Abatement—suit in other state—insurance policy.—The pendency of a suit in one state upon a policy of insurance is generally held not to constitute a ground of abatement in another suit upon the policy brought in another state. Thus, in the recent Iowa case of *Searles v. Northwestern Mut. L. Ins. Co.* 126 N. W. 801, annotated in 29 L.R.A.(N.S.) 405, it is held that an insurance company cannot abate an action to recover the amount due on a life policy, because it was assigned to a nonresident who has brought suit upon it in the state of his residence, although he cannot be made a party to the action, if the assignment is alleged to have been void for want of capacity to make it.

Appeal—acceptance of benefit—effect.—That the defendant in a suit by which his tax deed is set aside cannot unreservedly accept the taxes, interest, and charges tendered by the bill, and ordered by the decree to be paid him, and then appeal from the decree, is held in *McKain v. Mullen*, 65 W. Va. 558, 64 S. E. 829. This decision rests upon the principle that one cannot avail himself of that part of a decree which is favorable to him, accept its benefits, and then prosecute an appeal to reverse such portion of the same decree as militates against him, when the acceptance of the benefit from the one part is totally inconsistent with the appeal from the other.

The case is accompanied in 29 L.R.A. (N.S.) 1, by an exhaustive note collating the decisions upon the right to accept the favorable part of a decree, judgment, or order, and appeal from the rest of it.

Broker—unauthorized act—ratification by principal.—It is a well-settled rule of law that if an agent, in making a contract on behalf of his principal, inserts therein, without the latter's knowledge, stipulations which he was not authorized to make, and such stipulations are not essential elements of such contract, and are not brought to the notice of the principal, the latter's performance of his part of the contract will not be deemed a ratification of the unauthorized provisions.

This rule was applied in the case of *John Gund Brewing Co. v. Tourtellotte*, 108 Minn. 71, 121 N. W. 417, annotated in 29 L.R.A.(N.S.) 210, holding that where an agent with authority to sell certain land of his principal assigns to one with whom he contracts for a sale, the rent to accrue from tenants during the pendency of negotiations, or from the date of the contract to the completion of the transaction, the principal is not chargeable with liability on the ground of having ratified such a contract, in the absence of notice or knowledge on his part of its unauthorized terms.

Constitutional law—dance house—minors.—The constitutionality of an ordinance or statute forbidding the admission of minors to dance halls was passed upon, apparently for the first time, in the Minnesota case of *State v. Rosenfield*, 126 N. W. 1068, 29 L.R.A. (N.S.) 331, holding that such an enactment is a proper exercise of the police power, and not invalid as class legislation.

Cotenants—liability for rent.—In the Kansas case of *Thurstin v. Brown*, 109 Pac. 784, 29 L.R.A.(N.S.) 238, it is held that the mere occupation and use of the common property by one tenant in common does not create the relation of landlord and tenant between him and his cotenant, or render him liable for rent.

It is further laid down that before a tenant in common will become liable to pay rent to his cotenants for the use and occupation of the common property, his occupancy must be such as amounts to a denial of the right of his cotenant to occupy the premises jointly with him, or the character of the property must be such as to make such joint occupancy impossible or impracticable.

Similarly it is held in *Schuster v. Schuster*, 84 Neb. 98, 120 N. W. 948, that a tenant in common who is in sole, exclusive, and adverse possession under claim of title, is liable to his cotenant for an accounting for rents and profits.

These decisions are accompanied in 29 L.R.A.(N.S.) 224, by a note collating the recent cases on the liability of cotenants to account for use and occupation, or rents and profits, the earlier adjudications on the subject having been presented in a note in 28 L.R.A. 829.

Executor—administrator with will annexed—authority.—It seems that where powers are conferred upon an executor which are discretionary and involve a personal trust, they are held not to devolve upon an administrator with the will annexed by virtue of his appointment; but where the power was clearly not intended to be a personal one, but was evidently conferred upon the executor by virtue of the office, the power is held to pass to such administrator. The question in each case depends largely upon the circumstances and the nature of the power given.

In the recent Kentucky case of *Schlickman v. Citizens' Nat. Bank*, 128 S. W. 823, it is held that authority conferred upon an executor to carry on testator's business without bond will not, upon his resignation, pass to an administrator *de bonis non* with the will annexed.

The decisions dealing with the ques-

tions as to what special powers, other than powers of sale, conferred on an executor by will, pass to an administrator with the will annexed, are collated in a note which accompanies the report of this case in 29 L.R.A.(N.S.) 264.

Husband and wife—actions between—assault.—An interesting question was determined by the United States Supreme Court in the recent case of *Thompson v. Thompson*, Adv. Sh. U. S. 1910, p. 111, 31 Sup. Ct. Rep. 111, holding that the common-law relation between husband and wife was not so far modified as to give the wife a right of action to recover damages from her husband for an assault and battery committed by him upon her person, by D. C. Code, § 1155 [31 Stat. at L. 1374, chap. 854], authorizing married women "to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried."

"Nor is the wife left without remedy for such wrongs," observes the court. "She may resort to the criminal courts, which, it is to be presumed, will inflict punishment commensurate with the offense committed. She may sue for divorce or separation, and for alimony. The court, in protecting her rights and awarding relief in such cases, may consider, and, so far as possible, redress her wrongs and protect her rights."

Injunction—owner of franchise—invasion without right.—It has been repeatedly, but not uniformly, held that where a person or corporation has been granted a franchise for the purpose of constructing and maintaining a plant to be used for the benefit of the public, he may restrain any person or corporation from attempting to exercise such right in competition with him without legislative or municipal authority, although his franchise is not exclusive in the sense that the grant of a similar franchise to be exercised and enjoyed at the same place would be void.

In conformity with the current of authority it is held in the recent Oklahoma case of *Bartelsville Electric Light & P.*

Co. v. Bartelsville Interurban R. Co. 109 Pac. 228, annotated in 29 L.R.A.(N.S.) 77, that an ordinance of a municipal corporation granting to a corporation authority to use the streets, alleys, and public grounds of a city for the purpose of constructing and operating an electric light and power plant to furnish light and power to a city and its inhabitants confers privileges which are exclusive in their nature against all persons upon whom similar rights have not been conferred; and any person or corporation attempting to exercise such right without legislative authority or sanction invades the private property rights of the corporation to whom such franchise has been granted, and may be restrained at the instance of the owner of the franchise.

Insurance—unfiled chattel mortgage—materiality.—An interesting question which seems never before to have been presented to the courts is passed upon in the recent Nebraska case of *Madsen v. Farmers' & M. Ins. Co.* 126 N. W. 1086, 29 L.R.A.(N.S.) 97, holding that the existence in the hands of the mortgagee of an outstanding unfiled chattel mortgage upon a stock of goods, given as security for a guaranty of a debt of the mortgagor, is a fact material to the risk in a contract of insurance of the goods, even though the instrument contains a clause that it "shall not be valid until and unless filed."

Intoxicating liquor—license—forfeiture on conviction.—A novel question, which seems to have been but once previously before the courts, is presented in *Dinuzzo v. State*, 85 Neb. 351, 123 N. W. 309, 29 L.R.A.(N.S.) 417, holding that a statutory provision making it unlawful for a licensed saloon keeper to sell or give away intoxicating liquors after 8 o'clock p. m. and before 7 o'clock a. m., is not invalidated by reason of a provision therein which authorizes a fine of \$100 and a forfeiture of the license upon conviction of the licensee for violating the law, "whether such person convicted shall appeal therefrom or not."

Landlord—suit to establish title—tenant's right to set up title.—The few cases which have passed upon the question sustain the right of a tenant to deny and litigate with the landlord his title to the leased premises, where the title is put in issue by the landlord in an action to establish it, so that a decision favorable to the landlord would establish his title as against any adverse claims by the tenant.

This is the doctrine of the Texas case of *Stevenson v. Rogers*, 125 S. W. 1, annotated in 29 L.R.A.(N.S.) 85, holding that a tenant may, after termination of the lease, defend against an action by the landlord to recover possession and establish title, by showing a superior title in himself, without surrendering possession, where the success of the landlord would destroy the title of the tenant.

Larceny—asportation—sufficiency.—The general rule is that any removal of an article, however slight, from the place where it was found, amounts to such an asportation of the property as will support an indictment for larceny.

The rule was applied in the recent Iowa case of *State v. Rozeboom*, 124 N. W. 783, holding that the mere dragging or rolling, by a shipper of butter, of tubs of that material belonging to another shipper, from one portion of the car to another, with intent to appropriate them to his own use, is sufficient asportation to constitute larceny, although he does not lift them from the floor,—at least where he changes the addresses on them, so as to cause the carrier to transport them as his agent.

The various decisions pertaining to the question are collated in the note appended to the report of this case in 29 L.R.A.(N.S.) 37.

Life tenant—satisfaction of lien—contribution.—The cases seem to be agreed that where a life tenant pays off a mortgage outstanding against the estate, he is entitled to reimbursement from the remainderman. So, it is held in the Nebraska case of *Draper v. Clayton*, 127 N. W. 369, annotated in 29 L.R.A.(N.S.) 153, that where a life tenant of

real estate pays off a past-due encumbrance which is a lien upon the entire estate, he is entitled to contribution from the remainderman, and should recover from him the difference between the principal debt and the present value of an annuity equal to the annual interest charge running during the years which constitute the life tenant's expectancy of life.

Mechanic's lien—excessive statement—effect.—Notwithstanding the statutes of the several states require that a lien claim shall correctly state the sum due the claimant over and above all just credits and set-offs, it is a well-established rule that a mechanics' or materialman's lien will be enforced *pro tanto*, although a larger sum is claimed than is actually due, when such excess is unintentional. But if the excess is due to the inclusion of a charge for which the law does not in any event confer a lien, it will defeat the lien *in toto*, unless the nonlienable charge is separately stated, so that it may be segregated from the lienable portion upon inspection of the lien claim.

If the larger amount is wilfully or intentionally claimed, or if the correct amount might have been learned by the exercise of reasonable diligence, the lien will be defeated *in toto*; and in some cases it is held that a grossly exaggerated claim, remaining unexplained, will have the same effect. The question of excessive lien claims, however, is regulated by statute in some jurisdictions.

In *Griff v. Clark*, 155 Mich. 611, 119 N. W. 1076, it is held that an excess of 60 or 70 per cent in the amount of claim filed to secure a mechanics' lien will prevent the lien from attaching, where the statute requires a just and true statement of the demand due.

This decision is accompanied in 29 L.R.A.(N.S.) 305, by an extensive note, which discusses the case law bearing on the effect of filing an excessive mechanics' lien.

Milk—ordinance authorizing summary destruction—constitutionality.—An interest-

ing question is presented in the recent Minnesota case of *Nelson v. Minneapolis*, 127 N. W. 445, holding that an ordinance authorizing the summary seizure and destruction of milk not conforming to the standard fixed by law is not violative of the constitutional rights of the citizens, nor a taking of property without due process of law.

The report of this case in 29 L.R.A.(N.S.) 260, is accompanied by a note upon the validity of a statute or ordinance authorizing the destruction of food products below a prescribed standard or unfit for use.

Municipal corporation—grant of tax exemption by contract—validity.—A contract between the owner of property in a city and the municipal authorities of the latter, wherein it is provided that no taxes on such property above a specified amount (which is less than the amount of taxes due) shall be collected by the city, in consideration of specified privileges and benefits conferred upon it by the owner of the property, is held unlawful and not enforceable in *Tarver v. Dalton*, 134 Ga. 462, 67 S. E. 929, which is accompanied in 29 L.R.A.(N.S.) 183, by a note collating the recent cases dealing with the power of a municipality to exempt property from taxation, the earlier cases on the subject having been discussed in a note in 15 L.R.A. 860.

Nuisance—cancer hospital.—It may be laid down as a generally accepted rule of law that a hospital, whether for treatment of ordinary diseases or for treatment of contagious and infectious ones, is not a nuisance *per se*, though it may become such by reason of the place of its location or because of the manner in which it is conducted. Thus, in the recent Kansas case of *Stotler v. Rochelle*, 109 Pac. 788, annotated in 29 L.R.A.(N.S.) 49, it is held that the establishment of a cancer hospital in a residence neighborhood in near proximity to dwellings may be enjoined at the instance of one owning and occupying adjacent property.

Public money—appropriation for home for aged women—constitutionality.—An appropriation made in behalf of an association furnishing a permanent Christian home for homeless and aged women, and a temporary home for women seeking employment, is upheld in the Kansas case of *Ingleside Asso. v. Nation*, 109 Pac. 984, as against an objection that the purpose of the association was not a public one. Although the fact that the institution involved in this case generally required a fee as a condition of admitting inmates is not made the basis of a distinct argument in the opinion as to its character as a public institution, that fact seems to have been taken into consideration, and the decision necessarily involves the point that that fact did not deprive the institution of its character as a public charity for the aid of which public funds might be constitutionally appropriated. The note appended to the report of the case in 29 L.R.A.(N.S.) 190, deals with the question of requiring payment from inmates as affecting the right of a charitable institution to public aid or exemption from taxation.

Sale—cattle—concealment of latent defect.—It is well settled that the rule of *caveat emptor* applies to a sale of live stock, even though they are diseased, if the seller is unaware of their condition, and no fraud is practised upon the buyer. On the other hand, if at the time of such sale, the live stock was subject to a disease known to the seller, which he concealed, and which was not discoverable by the buyer with ordinary vigilance, the rule of *caveat emptor* does not apply, and the sale will be deemed fraudulent.

The recent Oklahoma case of *Puls v. Hornbeck*, 103 Pac. 665, annotated in 29 L.R.A.(N.S.) 202, holds that a vendor who sells cattle at a sound price, knowing that they have Texas fever ticks on them, or any other infection affecting their value for the purpose for which they are bought, the infection not being easily detected by those having had no experience with it, and who does not disclose such knowledge to the vendee, is guilty of the fraudulent concealment of

a latent defect, for which he must answer, and the rule of *caveat emptor* does not apply. But the vendor is not answerable unless he has knowledge, prior to the time the sale is consummated, that the cattle had such ticks on them.

School—colored pupils—power to prohibit.—That the legislature cannot, under its police power, prohibit, or authorize the voters of the county to prohibit, the establishment within the county limits, by a private charitable corporation, of an industrial school for colored children, is held in the recent Kentucky case of *Columbia T. Co. v. Lincoln Institute*, 129 S. W. 113. As appears by the note appended to this decision in 29 L.R.A.(N.S.) 53, it seems to be the rule that the power to regulate or prohibit private schools is subject to the same limitations as the power to regulate private property rights in general, under constitutional provisions, although public schools and the subject of education are within legislative control, and the legislature, under the police power, may regulate education in many respects in private schools. But the exercise of such police power must not be arbitrary, and must be limited to the preservation of the public safety, the public health, or the public morals.

Seduction—offer of marriage—defense.—The great weight of authority supports the view that an unaccepted offer to marry is no defense, under a statute making the subsequent marriage of the parties a bar to a prosecution for seduction.

And by the recent Texas case of *Thorp v. State*, 129 S. W. 607, annotated in 29 L.R.A.(N.S.) 421, it appears that the fact that the offer of marriage cannot be accepted because the woman has married another between the commission of the offense and the trial will deprive one accused of seduction of the benefit of a statute providing for the dismissal of the prosecution upon an offer, in good faith, to marry the person seduced.

Succession tax—homestead—statutory allowances.—An unusual question is con-

sidered in the California case of *Re Kennedy*, 108 Pac. 280, 29 L.R.A.(N.S.) 428, holding that the statutory homestead and allowances set apart by the court to the family of a decedent pending administration of his estate are not within the provisions of a statute providing for a succession tax on property which shall pass by will or by the intestate laws of the state, and it is immaterial that had the property not been so set apart it would have passed to the widow under the will.

Tax—ship—steam dredge.—A self-propelling seagoing steam dredge engaged for a long period of time on government work in a particular county of the state where it is located on the day when taxes are assessed is held in *North American Dredging Co. v. Taylor*, 56 Wash. 565, 106 Pac. 162, to be taxable there regardless of where its owner resides or its home port is located. The general rule stated in this case that the situs for taxation of a vessel engaged in foreign or interstate commerce and merely touching at local ports, regularly or otherwise, as an incident of such commerce, is at the home port of the vessel, or at the domicile of the owner, and the exception to that general rule in case a vessel is so used within a particular state, other than that of the home port or domicile of the owner, as to impress her with a local character,—are both well sustained by the authorities, the more recent of which are appended to the report of the case in 29 L.R.A.(N.S.) 105, the earlier decisions having been collected in a note in 37 L.R.A. 518.

Trial—directing verdict on opening statement.—That the court cannot direct a verdict for plaintiff in an action of forcible entry and detainer to recover possession of real estate, upon the admission of counsel in his opening statement that the legal title is in plaintiff, is held in *Pietsch v. Pietsch*, 245 Ill. 454, 92 N. E. 325, which is accompanied in 29 L.R.A.(N.S.) 218, by a note upon the right to direct a verdict or enter a nonsuit on the opening statement of counsel.

Water—grant of preferential rights—va-

lidity.—An unusual question is presented in the California case of *Leavitt v. Lassen Irrig. Co.* 106 Pac. 404, 29 L.R.A.(N. S.) 213, holding that one who owns a system for the distribution of water appropriated for sale, rental, and distribution to the public cannot confer upon any consumer a preferential right to the use of any part of the water, by contract to supply him in perpetuity with water, and then assign him his own rights under the contract, so that he will hold the right to the water free from any obligation to the public system.

Will—signature at the beginning—sufficiency.—The place of signature of a will originally was considered of little importance, the statute of frauds being sufficiently complied with if it appeared in any portion of the instrument, provided it was the testator's intention that it should stand as a signature; but the statute of wills, as enacted in England and several states of this country, expressly requires the testator's signature to be placed at the end or foot of his will; but it cannot be stated with certainty that holographic wills fall within the terms of the statute, although in New York it has been held, in cases involving sufficiency of publication and acknowledgment, that holographic wills do not form an exception to the requirements of such statute.

It has been recently decided in *Meads v. Earle*, 205 Mass. 553, 91 N. E. 916, annotated in 29 L.R.A.(N.S.) 63, that a signature sufficient to meet the statutory requirements is effected by one who, writing his own will, begins by writing his name, with intent that it should stand as his signature to the will when completed, and, after disposing of his property, secures the witnesses' signature to the attestation clause, although he does not sign the will at the end.

Writ—publication—partnership—validity.—A question which has seldom been presented for adjudication was raised in the case of *Ord v. Neiswanger*, 81 Kan. 63, 105 Pac. 17, annotated in 29 L.R.A.(N.S.) 287, holding that service by publication upon a partnership by its firm name, without specifying the individuals composing it, is not necessarily void.



New Books and Recent Articles

Recent Books of Interest to Lawyers

"Modern Theories of Criminology."—By C. Bernaldo de Quirós, Madrid. Translated from the Spanish by Dr. Alphonso de Salvio, with preface and introduction by W. W. Smithers, Esq., of the Philadelphia Bar. (Little, Brown & Co., Boston, Mass.) \$4 net.

"Criminal Psychology."—By Hans Gross. Translated from the German by Dr. Horace M. Kallen, with preface and introduction by Joseph Jastrow, professor of Psychology in the University of Wisconsin. (Little, Brown & Co., Boston, Mass.) \$5 net.

These works are the first of a series of nine volumes, consisting of translations of the most important works of eminent continental authors on Criminal Science. They will afford the American lawyer a systematic acquaintance with the controlling doctrines and methods regarding the individualization of the treatment of criminals, and the study of the causes of crime that now hold the stage of thought in continental Europe.

Señor de Quiros is one of the most eminent of modern Spanish criminologists. He has edited a "Library of Penal Science," and has written another treatise on "Crimes of Violence in Spain." The present work is a concise survey of all the European writers on Criminal Science during the last century. Several hundred are passed in review. It sums up the contributions of each one, aligns the respective schools of thought, and critically places each writer and each theory. It is the best reference handbook for learning the significance of each worker.

The science of criminology is a secondary evolutionary consequence of the study of penology. Until recently the field of the causes and nature of crimes, and treatment of criminals from their psychological, physiological, and social relations to the offense, lay practically unexplored. Every attempt to adopt a theory was trammelled by the phantom tradition of the centuries,—the cry for vengeance by the outraged law. The criminal, being the product of cosmic, biological, or social influences which put him out of harmony with conventional morality, and cause him to disturb the recognized aims of community existence, must be treated as a ward of the state for the purpose of curing his impairment, and restraining him so as to prevent injury to others. These are the practical guiding principles which the true science of criminology is rapidly making more accurate and more capable of application.

Professor Gross, author of "Criminal Psychology," is one of the half dozen most eminent European students of Criminal Science. He has been a criminal magistrate, and is now Professor of Criminal Law at the University of Graz, Austria. He is editor of the "Archives of Criminal Anthropology and Criminalistics," published at Leipzig, and has published numerous books and essays, including a Handbook for Criminal Magistrates (translated into French, Italian, and English). He was one of the first to study the psychological methods of crime-detection described afterwards in this country by Professor Münsterberg.

What Professor Gross presents in this

volume is nothing less than an applied psychology of the judicial processes,—a critical survey of the procedures incident to the administration of justice, with due recognition of their intrinsically psychological character, and yet with the insight conferred by a responsible experience with a working system. The present volume bears the promise of performing a notable service for English readers by rendering accessible an admirable review of the data and principles germane to the practices of justice as related to their intimate conditioning in the psychological traits of men.

"The Complete Orations and Speeches of Henry W. Grady."—Edited by Edwin DuBois Shurter (South-West Publishing Co., Austin, Tex., or San Francisco, Cal.) \$1.50 net, postage 10 cents.

Although Grady is, by common consent, the representative orator of the South since the Civil War, a complete edition of his speeches has never before been published; and this volume was prepared in the belief that a complete collection of the orations and speeches of this gifted Southerner would be welcomed by his many admirers. In preparing this volume, the editor had a thorough search made of the files of the Atlanta Constitution, and has included all the speeches by Grady there found. His great speech on Temperance, for example, delivered in Atlanta during a prohibition campaign, and which has not heretofore appeared in print except in newspaper or pamphlet form, will be found in this volume.

"Jokes that We Meet."—Edited by Edwin DuBois Shurter (South-West Publishing Co., Austin, Tex., or San Francisco, Cal.) Price 75 cents.

Under this title the editor has compiled some four hundred humorous stories, anecdotes, etc., intended to furnish illustrative material for the reader, talker, and speaker, and also to furnish entertainment to the general reader.

A good, pat, illustrative story will enable a speaker to score a success with almost any audience. "How can I illustrate this point?" is a constantly recurring question. In preparing this volume

its usability in affording illustrative material was kept constantly in mind. The stories are first class, fresh, and pointed,—most of them new, and all good.

"American Oratory of Today."—Edited by Edwin DuBois Shurter. (South-West Publishing Co., Austin, Tex., or San Francisco, Cal.) \$1.65 net. Postage 15 cents.

This work contains specimens of present-day American oratory as represented by some two hundred distinguished speakers from all parts of the country. The book is intended for the use of lawyers or any one interested in public speaking. The speeches are all by living Americans on live subjects, and the work is truly "American"—national—in its scope. It constitutes an interesting and suggestive expression of current thought in America as revealed in public speech. Both sides are given representation whenever practicable. There are orations expounding the virtues of the Republican and the Democratic parties; eulogies upon the Union Soldier and the Confederate Soldier; discussions of Conservation, Insurgent Republicanism, and Suffrage for Women; and eloquent Jury Pleas.

"Thirty-Five Years in the Divorce Court."—By Henry Edwin Fenn. (Little, Brown & Co., Boston, Mass.) \$3.50.

Mr. Fenn gathered the material for this interesting book while reporting the divorce court for the London Daily Telegraph. Some of the most famous divorce cases of the past generation came under his observation, and both lawyers and laymen will find his comments most illuminating. He gives character sketches of many of the foremost English lawyers, and the book is replete with anecdotes, which are well told. The author possesses a charming style, and his work is an entertaining and valuable contribution to the literature of the law.

"Criminal Slang."—By Joseph M. Sullivan, LL.B. (Underworld Publishing Company, 178 Washington Street, Boston, Mass.)

This little pamphlet is a dictionary of

the vernacular of the underworld. It contains about a thousand slang words and expressions used by criminals, and defines their meaning. Its perusal will well repay the practitioner engaged in the prosecution or defense of criminal actions.

"Famous Speeches."—Edited by Herbert W. Paul. Cloth, \$3.

"Casebook on Administrative Law."—By Ernst Freund. Buckram, \$4.

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Quaint and Curious

Odd and interesting legal incidents

A Near Lawyer.—An enterprising man residing in a Western state advertises on a blotter as follows:

"I AM NOT A LAWYER, But a Law Student and Notary Public.

800-Volume Law Library, with State Reports Added as they are issued. Read Law in 1904. Opened a General office in 1907. Both 'Phones. Over P. O.

"I WILL BE GLAD TO SERVE YOU

When in need of some one to draw a Lease, Deed, Mortgage, Contract, Will; or Settle an Estate; Make, Continue, or Examine Abstracts; Collect a Note or Account; Insure your Building, Stock, Goods, Auto, or Yourself against Sickness or Accident; Make a Loan or Conduct Your Law Suit before a Justice of the Peace."

New Appellate Procedure.—A ranchman living in the Panhandle of Texas had a grievance against a neighbor, and brought suit before a justice of the peace. At the trial judgment was rendered against the plaintiff. After reflecting upon his wrongs for several weeks, he decided that he wanted to appeal to the supreme court. His attorney instructed him to take all the papers in the case, place them in a sack, and forward them by express, addressed to "The Supreme Court of Texas, Austin, Texas, In Care of the Governor." This was carefully done. No decision has yet been reported back.

A Mere Fraction.—Exactness and particularity of description, as well as economy, of real property, are beautifully illustrated in a Illinois tax deed. It conveys the "east vigintillionth of a vigin-tillionth of the east 1/64 inch" of a certain lot. When surveyed and staked off, it would be worth going to see.

Mortgage Souls for Finery.—Two negro women, residing in Alabama mortgaged themselves "heart, body, and soul" to a local negro merchant for \$20 worth of dry goods purchased by them. No other security is mentioned in the paper, which was filed in the clerk's office of the probate court. Although such a mortgage is not legally binding, all the parties to the contract appeared to be perfectly satisfied.

A Unique Inventory.—Mrs. Corra Harris, author of "The Circuit Rider's Wife," and "Eve's Second Husband," a story which recently appeared in the Saturday Evening Post, has furnished an inventory of her deceased husband's estate to County Court Clerk Hunt. The inventory is probably unique in court records throughout the United States.

Mrs. Harris's husband, Lundy H. Harris, is generally supposed to be the hero of "The Circuit Rider's Wife."

The inventory furnished Mr. Hunt, and which appears on the official records of the county court clerk's office in Nashville, is as follows:

"Nashville Tenn.

"Mr. W. F. Hunt,

"Dear Sir—I have your card saying that if I do not furnish an inventory of the estate of Lundy H. Harris, of which I was appointed administratrix, 'within ten days from receipt of this notice, you will proceed as the law directs.'

"I did not know it was my duty to furnish such an inventory, and now that you demand it, I do not know how to do it.

"If the one I send you is not in proper form to be recorded upon your books, I enclose postage, and request you to let me know wherein I have failed.

"It is not with the intention of showing an egregious sentimentality that I say I find it impossible to give you a complete and satisfactory inventory of the estate of Lundy H. Harris. The part that I give is so small that it is insignificant and misleading.

"At the time of his death he had \$2.35 in his purse, \$116 in the Union Bank & Trust Company of this city, about 400 books, and the coffin in which he was buried, which cost about \$85.

"The major part of his estate was invested in heavenly securities, the values of which have been variously declared in this world, and highly taxed by the various churches, but never realized. He invested every year not less (usually more) than \$1,200 in charity, so secretly, so inoffensively, and so honestly that he was never suspected of being a philanthropist, and never praised for his generosity. He pensioned an old outcast woman in Barton county, an old soldier in Nashville. He sent two little negro boys to school, and supported for three years a family of five who could not support themselves. He contributed anonymously to every charity in Nashville; every old maid interested in a 'benevolent object' received his aid; every child he knew exacted and received penny tolls from his tenderness. He supported the heart of every man who confided in him with encouragement and affection. He literally did forgive his enemies, and suffered martyrdom September, 18, 1910, after enduring three years of persecution without complaint. He considered himself one of the chief of survivors, and was ever recognized as one of the largest bondholders in heaven.

"You can see how large his estate was, and how difficult it would be to compute its value so as to furnish you the inventory you require for record on your books. I have given you faithfully such items as have come within my knowledge. Sincerely yours.

Corra Harris."

Intermittent Punishment. — A Canton judge has sentenced a prisoner to spend every Sunday in jail till further notice. The man was found guilty of assault, and clearly deserved considerable punishment. But he had a large family de-

pendent upon him, who had committed no offense and did not deserve to suffer. To impose an ordinary workhouse sentence would punish not only the man, but also every member of his family.

So the ingenious judge decided to allow the prisoner to go free for the six working days, in order that by his labor he could continue to provide food for wife and little ones. But Sunday, the day of rest, is the one logical day of punishment. On this day the man who has offended the law may make expiation and reparation, and the innocent will not suffer.

While this scheme of justice may work well in particular cases, it is evident that it cannot be generally put into effect. It would seem, however, that the state ought, instead of compelling prisoners to remain idle, or confiscating their labor power, to provide some means whereby their earning capacity may be made of pecuniary benefit to those dependent upon them.

Another interesting incident of this nature is reported from Georgia, where it is said that United States District Judge Newman, moved by the pathetic letters he had received from wives and children in the north Georgia mountains, to permit their husbands and fathers to come home for Christmas, ordered eight moonshiners who are serving sentences in the Atlanta jail released, so that they might spend the holidays with their families. Judge Newman made the condition that the eight moonshiners should return to jail after Christmas and finish their sentences, and each man gladly agreed.

"I am sending you home for Christmas," said the judge, "to return to jail after the holidays and complete your sentences. Can I trust you?"

"You can," said an old moonshiner, who acted as spokesman. "No mountaineer ever broke his pledged word."

Presumption of Death. — In *McCartee v. Camel*, 1 Barb. 455, in which the question arose as to the presumption of a certain person's death after seven years' absence, unheard of, it appeared that the last time news had been received from her she was living at Never Die, near Balti-

more; and the administrator probably acted upon the presumption that she was dead because letters written to her some ten or twelve years before had remained unanswered. The chancellor, however, said that it was almost as unsafe to rely upon that circumstance as evidence of her death as it would have been to presume from the name of her last-known place of residence that she would live beyond the usual period of human life.

Self-Accusers.—A Minnesota justice of the peace learned that the legislature at its last session had passed a law requiring milk and cream buyers to take out a state license, when called upon to impose a fine upon a neighbor for so doing. Recalling that he himself was guilty of violating the same law, he promptly imposed upon himself and paid a similar fine. This is a commendable instance of civic virtue.

The motives of the California man who recently asked for a warrant for his own arrest on a charge of vagrancy, and received five days on the chain gang, are not so apparent. Possibly he was hungry, and could see no other method of receiving food in exchange for labor. Perhaps he was a budding writer in search of local color and realism. Or he may have been unbalanced mentally. In any event he doubtless found the sentence long enough.

Novel Reasons for Divorce.—Fraudulent representation by her husband that he was a baptized person was adjudged sufficient ground for granting a divorce to a woman in Indianapolis, recently. In accordance with such representations she obtained a dispensation to marry the man who became her husband, but later discovered he had never been baptized. She alleged that the dispensation was not a valid one, and that holding her to the marriage under it would result in denying her the rights of her church.

Because his youthful bride of five weeks objected to walking with him barefooted in the dew-covered grass before sunrise, an elderly and wealthy husband has brought suit for separation in the courts of New York. The wife is now living without the state. According to the papers filed in court she took two early walks with her husband, but firmly

declined to continue the practice, and forthwith left him.

Correspondence of an unusual nature formed part of the evidence before the Minnesota supreme court in the trial of a divorce action. The wife, as indicative of her husband's treatment of her, submitted three sheets of a hotel letter paper which she received from him through the mail while he was in another city. The sheets bear only two words, "Friend wife," and for the rest are nothing but much black ink. The husband, interpreting the missive for the bewildered court, said that a letter which his wife had written made him "very wrathful," and he felt the need of a reply which "would express his feelings," so he just poured the ink on the sheets and mailed them when they dried.

Remedies for Wife Beating.—A young woman recently declared in the Reno divorce courts that she had been compelled to endure her husband's abuse and tyrannical fits of anger until, when he struck her with his fist upon her breast, from which she was unconscious for two hours, she decided to stand it no longer, and forthwith left him. She said her spouse believed a husband should beat his wife in order to keep her subdued. To remedy this condition of affairs she sought and obtained a divorce.

Recently a Pennsylvania justice of the peace sent a constable after a chronic wife-beater who had again beaten and badly injured his wife. When the prisoner arrived he found his Honor awaiting him with a horsewhip, which he wielded vigorously upon the miscreant, until the latter, thoroughly cowed and flogged, begged for mercy. This method is somewhat summary, but quite likely to be effectual.

A Washington (D. C.) woman whose husband kicked her sought neither divorce nor judicial championship. She sued her husband for damages, but failed to recover because the statute authorizing separate suits by a married woman was not broad enough to warrant such an action. When the time comes that married men must pay for abusing their wives, we fear that a lot of them will have to go into bankruptcy.



Judges and Lawyers

Personal mention of Bench and Bar

Illinois' Chief Justice

who has served for twenty years in a judicial capacity.



HON. A. K. VICKERS

HONORABLE Alonzo K. Vickers was born on a farm in Massac county, Illinois, on September 25, 1853. He was educated in the public schools and in the high school of Metropolis, the county seat of Massac county. His youth was passed in school attendance and working on the farm. In 1861 his two older brothers patriotically went to the defense of the Union. Alonzo, then a boy of eight, was the oldest son left at

home to aid his widowed mother. Thus early in life he learned to bear the burden of responsibility, and laid the foundation of the sterling qualities that have distinguished his manhood.

At the age of nineteen he became a teacher in the public schools, and followed this congenial occupation for six years.

He studied law in the office of Judge Robert W. McCartney, of Metropolis,

Illinois, and was admitted to the bar in 1882. He located in Vienna, Johnson county, where he enjoyed a lucrative practice for a country lawyer.

In 1886 he was elected as a Republican to represent his district in the lower branch of the Illinois legislature, and served one term. Upon the expiration of his brief legislative career, he resumed the practice of the law, and in 1891 was elected circuit judge of the first judicial circuit of Illinois and re-elected in 1897 and 1903. After his election to the circuit bench, in 1903, he was assigned by the supreme court to service on the appellate court of the second district of Illinois, which position he filled for one term of three years. At the end of his term as appellate judge, he was nominated for judge of the supreme court, to which position he was elected June 4, 1906, for a term of nine years. At the June term, 1910, he became chief justice of the supreme court of Illinois, which position he is now filling.

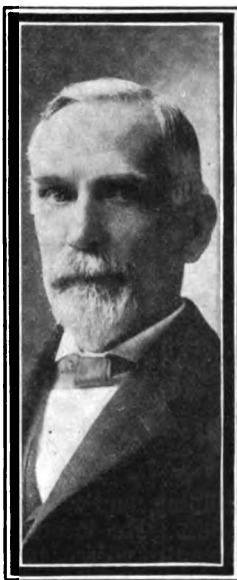
Judge Vicker's experience as lawyer, legislator, and circuit and appellate judge has peculiarly fitted him to perform the duties of the high position which he occupies.

After his election to the supreme bench, he removed with his family to the city of East St. Louis, where he now resides, and where his son is engaged in the practice of law.

Distinguished Maryland Judge

HONORABLE James A. Pearce, the son of James Alfred Pearce and Martha J. Pearce, his wife, was born at Chestertown, Maryland, April 2d, 1840.

James Alfred Pearce, the father, was a member of Congress from Maryland for two terms, 1835 to 1839, and was elected a senator of the United States from Maryland in 1841, where he was continued by three successive elections until his death, in December, 1862.



HON. J. A. PEARCE

James A. Pearce, the son, received his earlier education at Washington College, Chestertown, Maryland, and was graduated from Princeton in the class of 1860. He was a tutor at Washington College, Chestertown, for two years after graduation. Later he studied law in Baltimore with Brown & Brune, and was admitted to the Bar in Baltimore May 1st 1864. Immediately thereafter he began practice in Chestertown, and continued in active practice until November, 1897. He was elected state's attorney for Kent county in 1867, and served two terms, until 1875.

In November 1897, he was elected chief judge of the second judicial circuit of Maryland, comprising Cecil, Kent, Queen Anne, Caroline, and Talbot counties, and as such, an associate judge of the court of appeals of Maryland, for a term of fifteen years. Judge Pearce reached the age of retirement (seventy) April 2d, 1910, when the legislature extended his term for the period for which he was elected, *viz.*, until November, 1912. This action of the legislature was a splendid tribute to his judicial worth.

Personally Judge Pearce is a scholar-

ly and courteous gentleman, who, during his long career at the Bar and on the Bench, has exemplified the best traditions of his profession.

Louisiana Jurist Dies

Honorable Thomas J. Kernan died at his home in Baton Rouge, Louisiana, on January 9th. He was born in Clinton, East Feliciana parish, February 6th, 1854. Following his preparatory studies at Clinton High School, he attended Washington and Lee University, from which he graduated in 1873. After teaching for a time, he studied law in the office of his father, and was admitted to the bar in 1877.

Although one of Louisiana's most distinguished lawyers, Judge Kernan held but few public offices. He was a member of the American Bar Association, and at the St. Paul meeting four years ago read a paper on "The Unwritten Law," that brought him into national prominence. He was presidential elector from Louisiana in 1892, a member of the constitutional convention of 1898, and a member of the general assembly from East Baton Rouge during the sessions of 1904-1908.

He was the author of a great many of the reform measures during the Blanchard administration. He was also a prominent member of the commission on reform legislation.

He fathered the negotiable instruments bill, which was passed by the legislature, and which placed notes and negotiable paper of Louisiana on a parity with the commercial paper of other states. This has proven to be a most valuable aid to the state's financial and business interests.

Judge Kernan also worked faithfully for the Torrens land system in Louisiana, but the bill was never passed by the legislature.

He was one of the leading members of the special tax commission, of which Honorable Edgar H. Farrar was chairman, and which submitted a report to the legislature of 1908, advising a complete change in the tax system of the state.

Death of Justice Rogers.

Supreme Court Justice Watson M. Rogers died on February 1st, at his home in Watertown, New York. His death was the result of an injury to his head, received in a fall on an icy sidewalk two weeks ago. Justice Rogers was sixty-five years old. He was born at Cape Vincent December 3, 1846. In early life he taught school. He was graduated from the Albany Law School in 1868, and practised law in Watertown until 1900, when he was elected to the bench of the fifth judicial district for a term expiring December 31, 1914.

Justice Rogers had held court several times in New York city. Abe Hummel was convicted of conspiracy before him, and he heard the cases of Mary Farmer, tried for the murder of Sarah Brennan, and of Albert T. Patrick, convicted of murdering William Marsh Rice, the last time Patrick was sentenced. Several years ago, before going on the bench, Justice Rogers was called to New York to assist the district attorney in prosecuting violations of the election law. He succeeded in getting a number of convictions.

Maryland Trial Lawyer Dies.

Thomas J. Peddicord, the oldest member of the Garrett County (Md.) Bar and its recognized leader, died at his home in Oakland after a brief illness from pneumonia. He was admitted to the bar in January, 1871, and opened an office at Rockville, where he continued the practice of his profession until 1873, when he removed to Oakland. There was rarely a case of importance tried in Garrett county in which he did not appear, and his practice extended elsewhere. At one time he was prominently identified with the Maryland National Guard.

He contributed largely to the press, and his thoughtful articles were eagerly read by the general public. His unfailing courtesy of demeanor endeared him to a host of friends.

Missouri's Late Chief Justice.

HONORABLE

Gavon D. Burgess, late chief justice of the Missouri supreme court, was born in Mason county, Kentucky, November 5, 1835. He was educated in the common and select schools of his native state. He married Miss Cordelia Trimble, of Flemingsburg, Kentucky, she being a niece of Chief Justice John Marshall of the United States Supreme Court.



Judge Burgess had been a member of HON. G. D. BURGESS the state judiciary for thirty-six years, one half of that period being spent on the circuit bench, and one half on the supreme bench. He was elected judge of the eleventh judicial circuit (now the twelfth) in 1874, re-elected in 1880, and again in 1886. He was promoted to the Missouri supreme bench in 1892, and re-elected in 1902.

It may be said of Chief Justice Burgess that he was a lawyer of the old school,—a man of rugged personality, with strong convictions on the public questions of his time. He was a product of the common-school system, and his preparation for the highest place in the judiciary of his adopted state was found in the exacting, all-round practice of the country circuit, the same school in which some of our greatest statesmen and jurists received their early training for the higher honors which awaited them. His associates have testified concerning him: "He was a great advocate when at the bar, he was yet greater as a judge,—fearless, efficient, painstaking, and courteous. A courageous, vigorous, honorable man,—the best type of citizenship. He has passed into the history of the state, and his fame will grow with it forever."

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ROScoe POUND

Story Professor of Law in Harvard University.* He formerly held the professorship of Criminal Law in the University of Chicago. Professor Pound is especially interested in procedural reform and has made noteworthy addresses before many State Bar Associations.



CHARLES R. HENDERSON

Professor of Sociology in the University of Chicago and United States Prison Commissioner. Professor Henderson edited the four volumes entitled "Correction and Prevention" prepared for the eighth International Prison Congress.



LIGHTNER WITMER

Professor of Psychology in the University of Pennsylvania. Professor Witmer has pursued inquiries concerning the prevention of crime through adequate educational, mental and hygienic treatment of boys and girls, especially during the adolescent period.



DR. ADOLF MEYER

Director of the New York State Psychiatric Institute and Professor of Psychiatry in Johns Hopkins University. Dr. Meyer has deeply studied the medico-legal aspects of insanity and is interested in the reform of criminal procedure.



The Humorous Side

Frame your mind to mirth and merriment; which bars
a thousand harms and lengthens life.—Shakespeare

The Indigent Sane.—“That fellow who tried to kill the judge is crazy, isn't he?”
“No, he's too poor to be crazy—he couldn't hire a lawyer to prove it.”—Picayune.

Big Damages.—“Did Simpkins get any damages in that assault case?”
“Did he? My dear fellow, you ought to see his face.”—St. Louis Star.

His Opinion.—A man had been called as a witness to prove the correctness of the bill of a physician.

“Let us have the facts of the case,” said the lawyer, who was doing a cross-examination turn. “Didn't the doctor make several visits after the patient was out of danger?”

“No, sir,” answered the witness. “I considered the patient in danger as long as the doctor continued his visits.”

The Judge's Joke.—Judge Emery Speer presides over the Federal court in the southern Georgia district.

A prisoner was brought before him for sentence, and the judge gave the man fifteen years in the Atlanta Federal prison.

“Your Honor,” said the prisoner's counsel, “I beg that you will reduce that sentence. As you can see, my client is in very poor health. He cannot live for fifteen years. He can live but a short time. He is dying now, your Honor, and I beg that you will not be so severe in your penalty. I ask you to be merciful. I beg of you to reduce my client's sentence, in the name of humanity, for he cannot live fifteen years.”

“Very well, sir,” said the judge; “I will commute the sentence to life imprisonment.”—Saturday Evening Post.

Cured by Verdict.—The Lawyer.—“Temporary insanity, is generally cured, isn't it?”

The Doctor.—“Yes, by a verdict of acquittal.”—Philadelphia Record.

A Veteran.—Lawyer.—“The cross-examination did not seem to worry you. Have you had any previous experience?”
Client.—“Six children.”

Knew His Solitary Thoughts.—Lawyer.—“How do you know that this man was given to talking to himself when he was alone?”

Witness.—“Shure, haven't oi been wid him time and time again when he did it?”—Exchange.

How to Stop Him.—Lawyer Lawless was notorious for his longwindedness. On one occasion he had been spouting forth his concluding argument for six hours, and the end was nowhere in sight, when Judge Ballard beckoned his brother John and whispered: “Can't you stop him, Jack?” “I'll stop him in two minutes,” John Ballard replied, confidently. And he wrote and passed to Lawyer Lawless the following note: “My dear Colonel, as soon as you finish your magnificent argument I would like you to join me at the Revere House in a bumper of rare old Bourbon.” Lawyer Lawless, halting in the midst of an impassioned period, put on his glasses and read the note that had been handed him, then he removed his glasses again, and, taking up his hat and bag, said: “And now, may it please the court and gentlemen of the jury, I leave the case with you.” A minute later he was proceeding in stately fashion in the direction of the Revere House bar.—Argonaut.

"One Kind and Gentle Cow."—The Swede section foreman, says the New York World was laboriously filling out a report covering the killing of a cow by second section of No. 64.

The fussy claim agent certainly required an unreasonable amount of information, as evidenced by the printed questions on the blank form:

"Number of train?"

"Number of engine?"

"Name of conductor?"

"Name of engineer?"

"Speed of train?"

"Where was animal struck?"

"Etc., etc."

Ole succeeded but indifferently until he came to the final question, and here he experienced the inward consciousness of one qualified when he wrote in reply to:

"Disposition of animal?"

"He bane wan kind and yentle cow."

The Railroad Forever.—Down in Minnesota Mr. Olsen had a cow killed by a railroad train. In due season the claim agent of the railroad called.

"We understand, of course, that the deceased was a very docile and valuable animal," said the claim agent in his most persuasive claim-agent-like manner, "and we sympathize with you and your family in your loss. But, Mr. Olsen, you must remember this: Your cow had no business being upon our tracks. Those tracks are our private property, and when she invaded them she became a trespasser. Technically speaking, you, as her owner, become a trespasser also. But we have no desire to carry the issue into court, and possibly give you trouble. Now, then, what would you regard as a fair settlement between you and the railroad company?"

"Vall," said Mr. Olsen slowly, "Ay

bane poor Swede farmer, but Ay shall give you \$2."—Everybody's.

A Foolish Question.—"You swear that you did not coerce your wife when she signed this paper?"

"Me coerce my wife? Judge, look at the lady."—Louisville Courier-Journal.

Adaptability.—A New York lawyer tells of an old and well-to-do farmer in Dutchess county who had something of a reputation as a litigant.

On one occasion this old chap made a trip to see his lawyers with reference to a lawsuit he intended to bring. He sat down with one of them, and laid out his plan at great length. The lawyer said: "On that statement you have no case at all." The old fellow hitched his trousers nervously, twitched his face, and hastily added:

"Well, I can tell it another way."—Brooklyn Life.

Overhauled.—A dejected looking man who was suing for divorce told such a pathetic tale of abuse on the part of his wife that the judge finally asked:

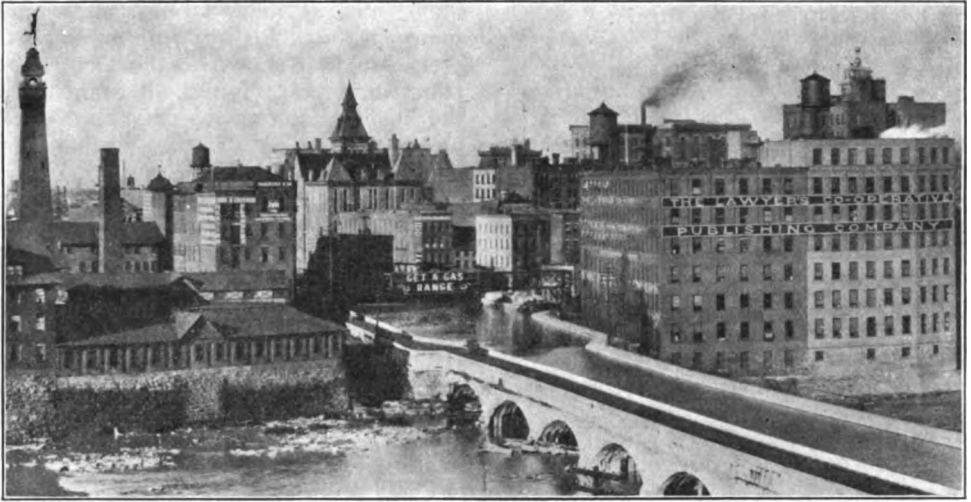
"Why, man, where did you meet this woman?"

"Meet her?" said the man with a suggestion of tears in his voice, "I never met her anywhere. She overtook me!"—Democrat and Chronicle.

A Defect in the Proof.—An attorney was addressing a jury on behalf of a prisoner.

"Gentlemen," he said, "witnesses have sworn that they saw the accused fire his gun; they have sworn they saw the flash and heard the report; they all fall flat; they have sworn that this bullet was extracted from Pete Jackson's body; but, gentlemen, in the name of justice, I ask you where is the evidence that the bullet hit Pete Jackson?"—London Tit-Bits.





In 1911

The Story of the Co-ops.



WHEN the writer used to carry a green bag under his arm (with a sample volume of L.R.A. in it) he was frequently asked "Why do you people call yourselves 'Co-operative?'" Sometimes the question was stronger, "What right have you folks to claim that you are 'co-operative' when in reality you are a stock company managed for dividends just like all the other law publishing houses?" And thereby hung a talk, and that is the tale you are going to hear now from the small boy who in 1882 used to drive the big 1400 lb. bay horse and "lumber wagon" carrying "sheet stock" from the railroad to the tin store-house out on the farm.

The "bornin" happened in the law office of a country practitioner in one of the pretty little villages of Western New York. "Happened" is the right word to use, for those responsible did not dream that they were bringing into the world a big idea which would develop into a great publishing house. Those first three were, the lawyer, his junior partner and

his son, a law student in the office. The idea which later grew so big originated in the need which the office felt for a set of U. S. Supreme Court Reports. When they found that the 106 volumes would cost from \$500 to \$600, if they could be secured at all, they evolved a co-operative scheme to get a set cheaper. They reasoned "There must be at least one or two thousand other lawyers who need U. S. Reports. If they will each agree to buy a set we can reprint them in compact form, 4 volumes in one book, for about \$1.00 a volume. A country newspaper press and a little postage soon induced the necessary number of lawyers to guarantee the cost and thus *co-operate* in this reprint, and that is really the whole story. These men had through their own need discovered again the old truth that the man who "does it better" gets the business. It came so fast that the practice had to be abandoned as well as the offices over the grocery, and the "doctor's place" was bought where the whole publishing company (seen in the picture on following page) occupied the whole lower floor. This hearty support gave them faith and courage to believe that it would pay to make the books far bet-

ter than a mere reprint by adding annotations and also by reporting the opinions at first hand from the records of the court at Washington. Right then they discovered another truth: That it is just plain business and good sense to improve your product to just as great an extent as increased patronage makes it possible.

That is the idea which has persisted to the present day in the "CO-OP." management and has kept the word "Co-operative" just as significant as in 1882 although never since then have they had to get advance assurance of support before going ahead.

On completion of the reprint of the U. S. Reports a similar work was performed for the New York Lawyer in the Lawyers edition of New York Common Law Reports and New York Chancery Reports. About this time (1885) their quarters got too small again and it was then decided to move to Rochester, nearer printing and binding plants. There they went into the Hill Building about 15 feet frontage—where one floor was at first enough. It was in this building that the second big idea was born. It was named "Lawyers Reports Annotated." It was a lusty infant too. Very soon its growth forced another change,—to the top floor of a big office building,—then the adjoining building,—then the floor below, until, in 1900, print

shop, bindery and "co-ops." all joined hands in the Aqueduct Building—the six story building shown in the picture. A short nine years found all branches of the business so crowded that the 7 story annex was built. It is now rather more than comfortably filled.

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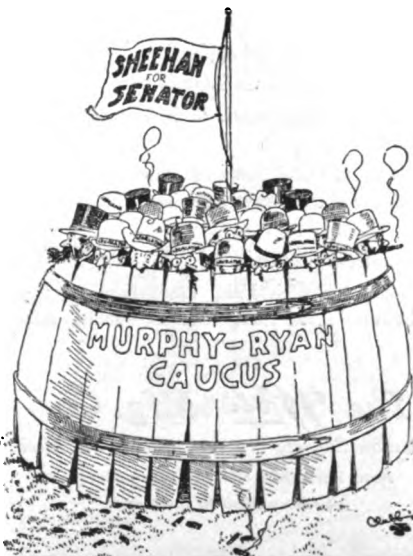
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[Continued on page XIX.]



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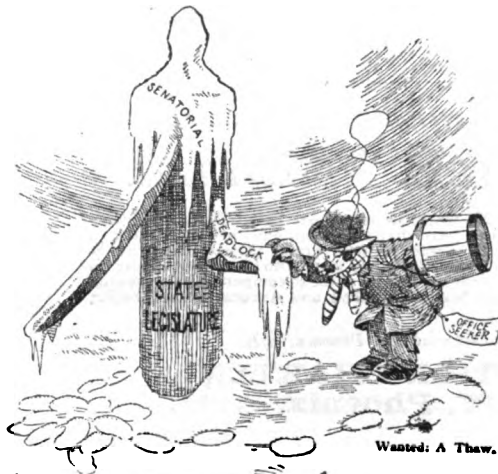
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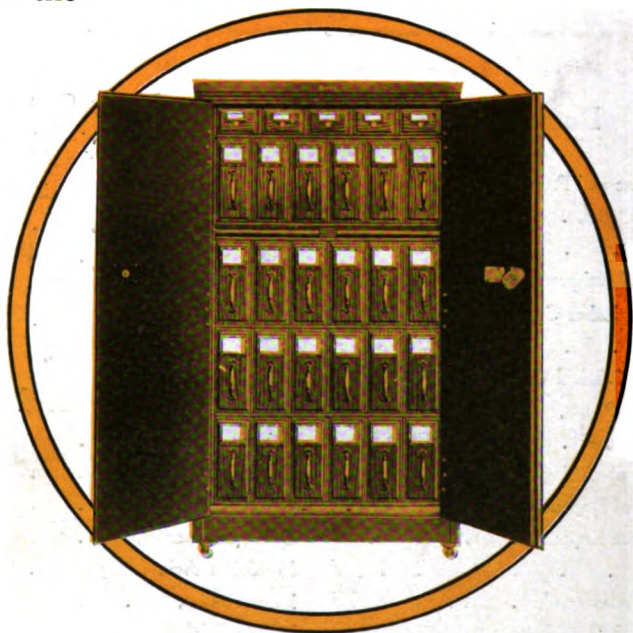
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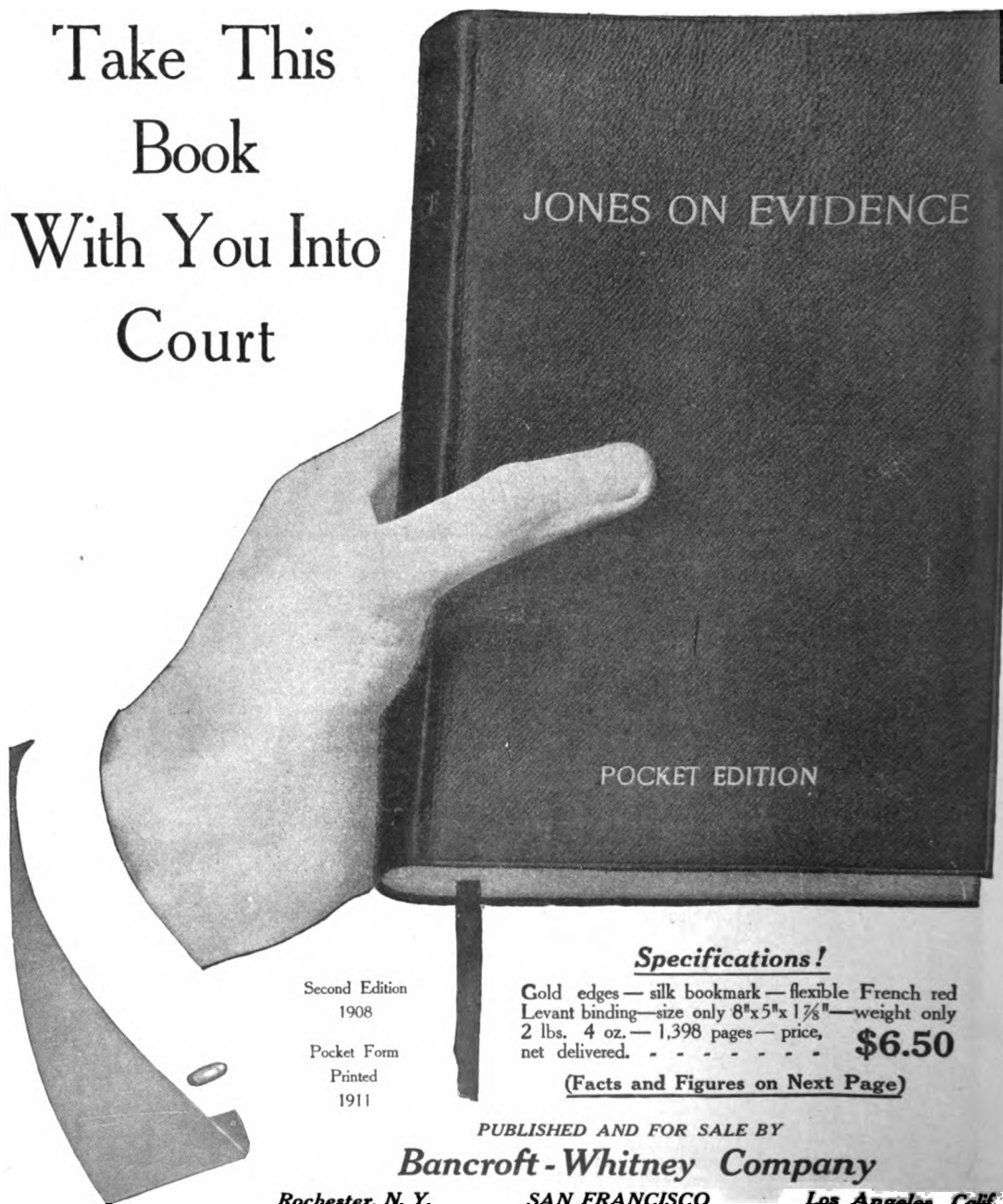
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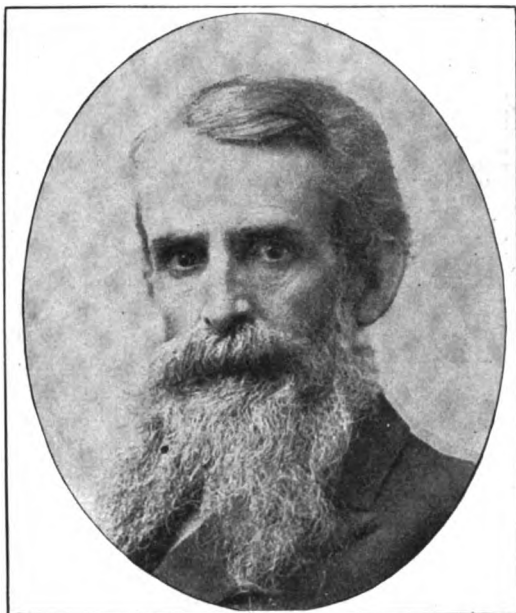
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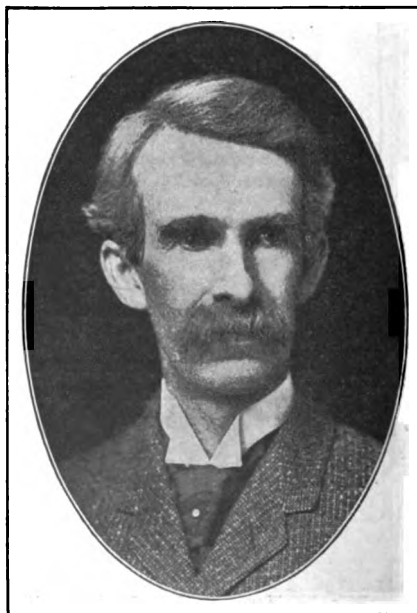
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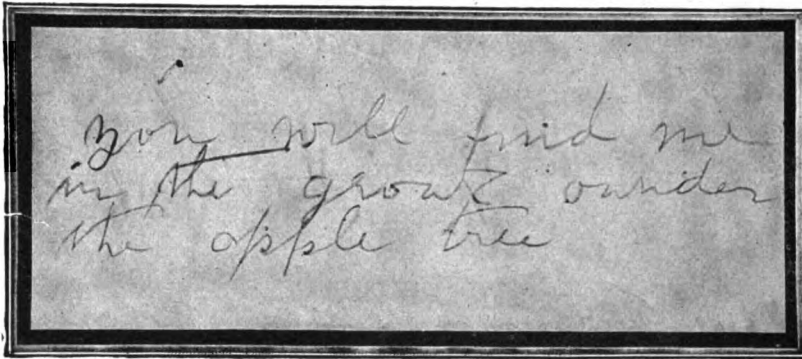
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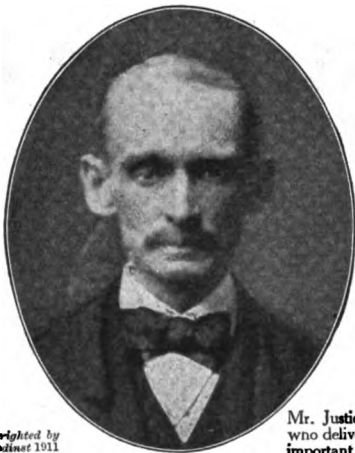
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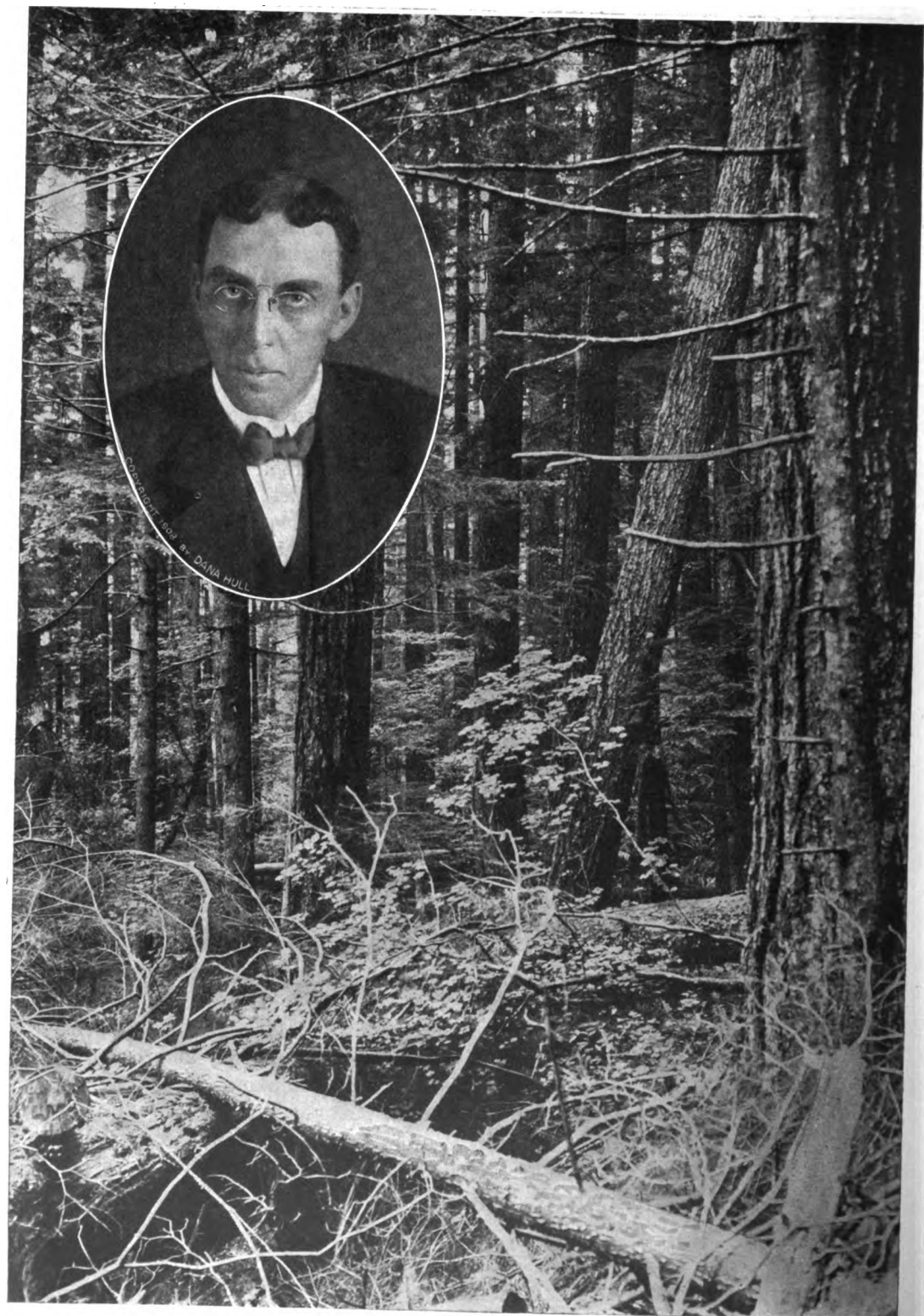
Honorable Walter L. Fisher, the new Secretary of the Interior, is described as a man whose information on such public questions as reclamation, irrigation, and water-power sites is broad and comprehensive. He has been one of Gifford Pinchot's staunchest supporters in the matter of conservation of natural resources. He was president of the Conservation League of America, and is now vice president of the National Conservation Association, which succeeded the League, and of which Mr. Pinchot is president. The purpose of the association is to harmonize all efforts towards conservation.

It is evident that the work of carrying forward the broad policy of conservation of our natural resources could not be committed to better hands. Mr. Fisher's character, ability, and experience would seem to make him an ideal trustee of our vast public domain.

He was admitted to the bar twenty-three years ago, and has since been in practice at Chicago. He was associated with the late Wirt Dexter, and is now a member of the firm of Matz, Fisher, & Boyden. He rendered invaluable service as secretary of the Municipal Voters' League of Chicago, which by fairly publishing the record of candidates for public office, without making any recommendations, gave great impetus to the cause of good government in Chicago.

Mr. Fisher's greatest accomplishment undoubtedly was the settlement of the traction problem in the city of Chicago. He found a great many street car companies with conflicting rights, many of them mismanaged, and hardly any of them giving the people of Chicago a fair and reasonable service. Most of the companies were practically free to serve the public as they chose, and to issue securities as to them might seem best. It is Mr. Fisher's extraordinary merit to have welded all these interests in the public interest, and without doing injustice to the companies so transformed. Students of municipal law have regarded with wonder and admiration his success in transforming a variety of private money-making corporations into useful public-service companies.

Mr. Fisher's portrait appears on the next page. The forest scene, taken on Cedar River, Washington, is from the collection of Prof. Herman L. Fairchild, of the Department of Geology, University of Rochester.



See Preceding Page

Conservation and New Nationalism

BY HERMAN L. FAIRCHILD, Sc. D.,
Professor of Geology in the University of Rochester.

[Professor Fairchild argues in favor of the national control of national property for the benefit of the people, and discusses the origin and growth of the conservation movement, which forms one of the demands in the progressive platform of the new nationalism, which is an outgrowth of the modern world-wide trend towards democracy.—Ed.]



THE American people are the most extravagant and wasteful that ever inhabited the earth. This statement is absolutely true. In a single century, with the aid of science and invention, we have so drawn on the natural resources of a great continent as to justify alarm for the future. In this exploitation America has not been alone, for ten years ago Alfred R. Wallace characterized the work of the nineteenth century as the "plunder of the earth." But this nation is the most guilty.

Waste of Natural Resources

The early settlers on the eastern border of the continent had to remove the forest before they could make farms, and the notion that cutting timber was improvement of the land has been inherited, so that ignorance and greed have destroyed the forests even on areas entirely useless for any other purpose. A large proportion of the anthracite, the finest fuel in the world, has been wasted by greedy methods of mining by corporations chartered for public service as common carriers, and not for mining. The stores of rock oil and rock gas have been very largely thrown away by our absurd system of allowing individuals to igno-

rantly and carelessly pierce the earth at their will. The most serious waste, though not the most evident, has been the robbing of the soil by ignorant and avaricious methods of agriculture. The decline in soil fertility has produced a "dry rot" in rural communities, shown by the loss in population. The most serious economic problem of the future is the food supply. The farmer is going to find it difficult to produce supplies at prices which the city dweller can afford to pay. One cause of present high prices is exhaustion of nature's resources.

In this indictment we must not forget the great destruction of animal life and great waste in human life, through poor sanitation, child labor, overwork, impurities in foods and drugs, and especially by accidents. The latest report of the Interstate Commerce Commission states that in the year ending June, 1910, the railroads of the United States killed 3,804 persons and injured 82,374, this being 1,013 more killed and 18,454 more injured than in the previous year. Our capitalistic system has made goods dear and men cheap.

Waste Due to Individualistic System

Our individualistic system is responsible for the waste. It is absurd to allow, for example, any man or group of men who happen to occupy a bit of land to unrestrainedly bore into the deep strata,

and permit the valuable hydrocarbons that have been stored through millions of years of geological processes to escape unused, perhaps merely to boom real estate; or to permit the slashing and burning of forests on rocky mountain slopes. And it is equally absurd when the guilty party is a great and rich corporation. The "public-be-damned" way of treating the products of nature is unscientific, unaltruistic and undemocratic. It is reversion to the primitive conditions of civilization. We must come to recognize that natural resources, as the land, coal, oil, and gas, phosphate, iron, water power, belong to all the people, and should be so used as to serve the general good.

Origin and Growth of Conservation Movement

These abuses and dangers have long been recognized by thoughtful men, but the people as a mass were indifferent until President Roosevelt sounded the alarm. A group of scientific men, partly in the public service, had the confidence of the President, and with the aid of their expert knowledge he initiated a programme of conservation of the nation's resources within the public domain. To these men and to Mr. Roosevelt the country owes a debt that

future generations will better appreciate. The President used his power as chief executive to withdraw public lands holding valuable forests, coal, minerals, and water-power from immediate sale or occupation, and advised Congress to pass protective legislation. In some cases where his authority to make withdrawals was in doubt, he gave the people the benefit of the doubt. Later,

Secretary Ballinger took the position that withdrawal must not be made unless the law specifically authorized it,—an attitude which played into the outstretched hands of exploiting interests. We can judge which position was the more noble and patriotic, as now all the withdrawals have been fully legalized.

The objection made by the opponents of the conservation programme, that the nation's resources are being locked away from the present generation in order to serve only later generations, is the cry of a baffled plunderer. "When the movement began to tell, it developed without delay that the one great obstacle to practical progress lay in the political power of the special interests. Every effort to conserve any natural resource for the general welfare was met by legislative agents of the



LOWER FALLS OF THE YELLOWSTONE
310 feet high, Yellowstone National Park, viewed from red rock
halfway down the canyon walls.

men who wanted to exploit it for their private profit. The effort to get things done in conservation taught clearly, unmistakably, and with little delay that, so long as the political domination of the great business interests endures, corrupt control of legislation will carry with it the monopolistic control of natural resources." (Gifford Pinchot.)

The Pinchot-Ballinger controversy is merely a skirmish between the advance guards of the two hostile forces, the people and the predatory interests; but it has served excellent purpose in awakening and educating the people and in stimulating action. Thus far the champions of the people have won. The coal of Alaska, probably of enormous value, has been safeguarded, thanks to the vigilance of Glavis and Pinchot; the right to the coal or ores does not now go with the agricultural possession of the public lands; and President Taft urges that laws be passed authorizing the leasing under rigid conditions, instead of sale, of the coal lands and water-power sites on the public domain.

National Control of National Property

The question of national control of national property does not affect New York state, because we have no government land within our borders. There could be no national property in any of the thirteen original states. In the Southern and Middle West states the nation has parted with most of its land. But in the far West vast tracts of land, with forest and wealth of minerals and water-power, are yet owned by the people at large. The great forest reserves and national parks, as well as all of Alaska and the Philippines, Hawaii, and Porto Rico, are national property.

Control of Water Power

The national control of the coal and other mineral wealth does not involve any serious difficulties, but the handling of the water-power rights presents a legal problem. The foes of conservation join with the honest believers in state control in claiming that the water power is a function of the streams and should belong to the states; while the conservationists hold that rights to the water

power go with the land or the power sites. In a very comprehensive and judicial address at the Conservation Congress, President Taft presented the argument for both sides without giving a definite opinion. Legally the mountain states have no claim on any national property within their confines, but for even justice they might ask that, since the Eastern states long ago acquired all the public lands within their borders, these states should not demand a share in the domain now withheld. Apparently there must be some compromise, and a co-operation of the national government with the mountain states in the handling of the water power, but it should never be turned over wholly to the states. None of the states have properly safeguarded the property and rights of the people, but have let them fall a prey to selfish business interests. As Roosevelt said in his splendid address at the Conservation Congress, "One of the prime objects of those who are grasping and greedy is to avoid effective control either by state or nation; and they advocate at this time state control simply because they believe it to be the least effective." Capitalistic interests founded on special privilege dread the increase of Federal power.

Trusts and monopolies now practically own all the coal and oil that have been discovered outside of the public lands; most of the timber, most of the water power, and the greater iron deposits. With their absolute control of all transportation they are now able to dictate the prices of food supplies and of many of the necessities of life. To create an absolute plutocratic tyranny it is only necessary that the interests should obtain control of the undeveloped resources on the public domain. Future industries will need to utilize all the water power. The capitalists have appreciated this, and have already acquired most of it.

Beneficiaries of Conservation

The vital problem before us "is not simply whether our natural resources shall be conserved, or whether they shall be destroyed. The ultimate question is this—for whom shall the natural re-



STONE MOUNTAIN NEAR ATLANTA, GA.

The ax and fire have removed the forest; and the heavy rains have removed the soil which once covered the larger part of this rocky knob. Neither wealth nor time can restore fertility to this mountain.

sources be conserved and who shall reap the benefit? On one side are the highly organized forces which have fattened upon unregulated monopoly, and which are striving for government by money for profit. On the other side are the plain American citizens who are striving for government by men for human welfare. The real reason why conservation has the support of all the people is that it is a moral issue." (Pinchot.) Beneath the questions relating to conservation lie the fundamental problems of human life and social justice.

Every great struggle for human freedom is at the basis economic. We are now fairly launched on a bitter fight for real democracy in America,—in other words, for economic justice. The conservation movement, led by Pinchot, Garfield and Roosevelt, is the very heart of the battle.

New Nationalism

The "New Nationalism" is another name for the popular movement toward the people's control of the necessities of life and of their own business. Conservation is only a part of the great worldwide movement toward democracy. It

is a movement that seeks to restore to the people the control of their own property and to conserve the resources of nature for the benefit of present and coming generations. The difficulty that conservation meets is the same that stands in the way of honest politics,—namely, selfish private interests and the power of capitalism.

As the name "New Nationalism" was given by Roosevelt, the thing it stands for is roundly abused, as should be expected, by the monopolistic interests and those who personally oppose him. But many people who are friends of democracy, or pose as such, ignorantly rant against the name. Let us find what it really means.

In his Osawatimie speech Roosevelt enumerated eighteen planks in his progressive platform, which he then aptly named "New Nationalism." These are as follows, stated concisely:

1. Elimination of special interests from politics.
2. Complete and effective publicity of corporation affairs.
3. Prohibition of use of corporate funds, directly or indirectly, for political purposes.

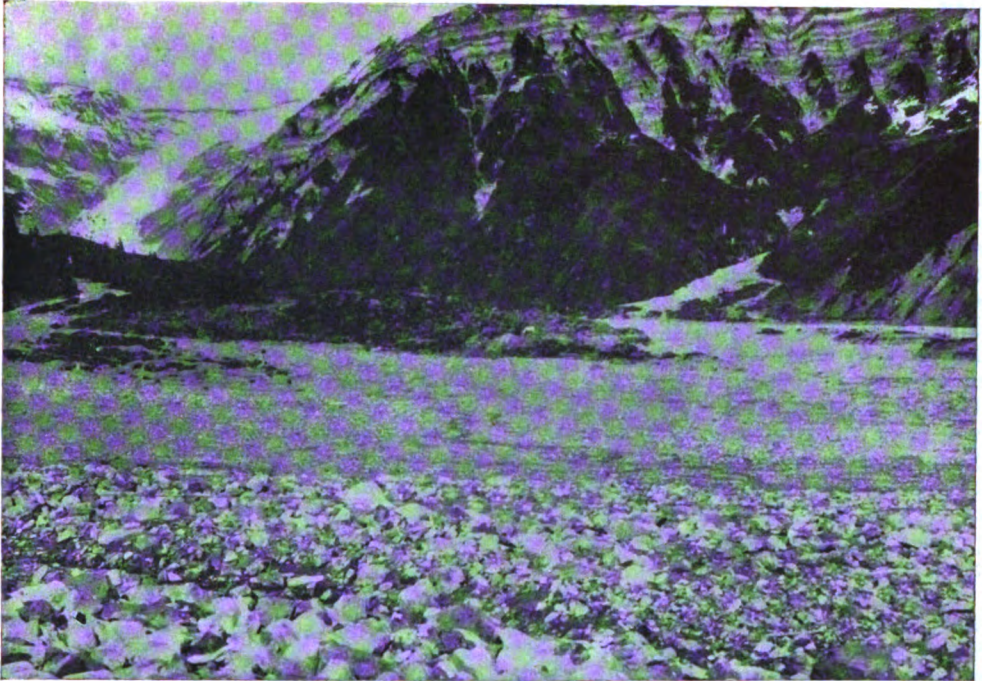


Photo by Brown Bros., N. Y.

Mt. Carbon, Alaska, in the Guggenheim Coal field, said to be a nearly solid mass of anthracite.

4. Government supervision of the capitalization of all corporations doing an interstate business.

5. Personal criminal responsibility of officers and directors of corporations.

6. Increased power of the Federal Bureau of Corporations and of the Interstate Commerce Commission.

7. Single schedule tariff revision.

8. Graduated income and inheritance taxes.

9. Readjustment of the national system of finance so as to prevent panics.

10. Efficient army and navy sufficient to insure peace.

11. Use of natural resources for the benefit of all the people.

12. Extension of work in agricultural bureaus and schools so as to consider all phases of farm life.

13. Regulation of the terms and conditions of labor by workmen's compensation acts; regulation of child and female labor; sanitation laws; and use of safety appliances.

14. Clear development of authority between national and state governments.

15. Direct primaries, associated with corrupt practices acts.

16. Publicity of campaign contributions before elections.

17. Prompt removal of unfaithful and incompetent public servants.

18. Prohibition of national officials performing any service for or receiving any compensation from interstate corporations.

Surely no true friend of democracy and of honest government can fairly object to a single one of these items, yet we hear the most violent condemnation from prominent men of both parties, especially in the east.

These violent critics would say that to the eighteen items given above there should be added three more to represent the substance of Roosevelt's declarations on other occasions, namely: (1) Expansion of the power of the national executive; (2) disparagement of the United States Constitution; (3) disparagement of the United States Supreme Court.

Centralization of Government

Unquestionably the growth of democracy in a great nation requires centralization of government; but the people's gov-

ernment, not the trust's government. The error of most writers who oppose the rule of the people is that they carry over into the democratic or socialistic *regime* the wrongs or abuses of the present undemocratic government. Local machinery of government cannot properly do much of the work that it now attempts to do, much less the expanding affairs of nationality. State lines are merely imaginary, and the larger part of the life and commerce of the people has no concern with locality or state. "The United States IS!" These opening words of the most eloquent address of Senator Beveridge at the Conservation Congress were approved with tumultuous applause. The laconic statement expressed the overwhelming sentiment of the Congress.

Could we delegate the work of our state to the counties? The whole trend is the opposite. We are properly concentrating the supervision of large affairs in the hands of state officials and state bureaus. It is in the line of efficiency, economy, and honesty. People who argue against the centralization necessary to meet the demands of modern conditions either forget that the railroad and telegraph have been invented, or they are not believers in real democracy. Matters which concern all the people of the nation, unlimited by imaginary boundaries of political divisions, should be handled by national agents. Think of what is already nation-wide; the postal and revenue service; the Geological Survey; the Mining Bureau; the reclamation work; the pure food inspection; interstate commerce control; postal service banks, etc., etc., and the list is growing. Would any well-wisher of the American people have these functions relegated to the states? Then why not a national income tax, and firmer control of interstate corporations? These two propositions cover all that is positively centralizing in Roosevelt's platform. But even that is quite sufficient to offend the owners and friends of the corporations.

Commercial Centralization

The whole trend of civilization is toward centralization or consolidation. It

is the natural result of the socializing effect of easy communication and transportation, with the growth of altruism and solidarity. Governmental functions must be centralized to cope with the centralization of the commercial world. Listen to so conservative a democrat as Woodrow Wilson: "The organization of business has become more centralized, vastly more centralized, than the political organization of the country itself. Corporations have come to cover greater areas than states, have come to live under a greater variety of laws than the citizen himself, have excelled states in their budgets, and loomed bigger than whole commonwealths in their influence over the lives and fortunes of entire communities of men. Centralized business has built up vast structures of organization and equipment, which over-top all states, and seem to have no match or competitor except the Federal government itself, which was not intended for such competition. Amidst a confused variety of states and statutes stands now the colossus of business,—uniform, concentrated, poised upon a single plan, governed not by votes but by commands, seeking not service but profits. . . . The great organization of business seemed to play with the states, to take advantage of the variety of the laws, to make terms of their own with one state at a time, and by one device of control or another to dominate wherever they chose, because too big to be dominated by the small processes of local legislation."

This gigantic menace of big business would seem to demand adequate Federal powers of control, but Wilson says "we do not believe the invention of Federal powers either necessary or desirable," and inconsistently argues for state control of what the states have been unable to control.

Inadequacy of Constitution

Concerning the national Constitution there is a sort of unthinking reverence that verges on superstition, and a pride that is not worthy. With all due honor to its builders, it must be said that this fundamental law was drafted before the development of modern science, inven-

tion, and industry; before there were any steamships, railroads, or telegraph; before there were any great cities in America, and before the greedy giant of Big Business had crawled out of his lair. It was devised in revolt from monarchy, but it did not provide for real democracy, and it compromised on the deepest principle of democracy, human freedom. It was framed to meet the conditions of a civilization very unlike that in which we live. In the same address quoted above, Woodrow Wilson says, speaking of Federal control of the colossus of business: "But this intimate task of regulation was not one for which its Constitution had furnished it with actually suitable or entirely adequate powers and authority."

Criticism of Supreme Court

The Washington Times has wittily said: "Considering that we can't do anything else to the Supreme Court, we surely should have the privilege of criticizing it." And have we not the right of criticism, and does the court not deserve criticism?

We are suffering from too much "interpretation" of law; too much judge-made law, which is as inconsistent for democracy as king-made law.

Democracy of New Nationalism

The New Nationalism is a part of the march of progress, a partial awakening of the spirit of democracy. It means a return of government by, of, and for the people. It means the taking of political power and privilege from the special interests. It means the people doing their business in their own way, for their own good.

This democratic movement has several steps: (1) Practically all the states now have a secret ballot and corrupt practices laws. (2) In some form nearly all the states have a system of direct nominations. We are now growing into the third stage. (3) Direct legislation by the initiative and referendum. This most

important step has been taken by nine states, Maine, Michigan, Missouri, Arkansas, Oklahoma, South Dakota, Montana, Nevada, and Oregon.

A fourth step (4) is the power of the people to remove inefficient or derelict public officers, and already in five states the dominant political party has given platform pledges for the reform.

These four cornerstones of democratic government, direct nominations, initiative, referendum, and the recall, are naturally accompanied by a simple, direct, and responsible municipal government, and already one hundred and fourteen American cities are working, with surprising success, under the system of Commission Government.

Industrial Revolution

This political revolution is in cause and effect an industrial revolution, the people taking into their own hands the control of the sources of wealth. A partial regulation of the means of transportation now generally prevails, and the public control of all public utilities is rapidly extending. Special privilege to exploit the people should be wholly stopped, for in a democracy special privilege is immoral. Not only in the matter of public service is the power of capital being curtailed, but also in industrial ways, as in mining and water power. The certain lowering of the tariff will take from greedy business another source of exorbitant profit. Truly, the divine right of riches is passing away, like other forms of oppression. Doubtless, since human nature cannot greatly change, the strong will ever seek to profit by the labor of their weaker fellow men, and ideal justice with equal opportunity may never come; but the people will sometime cease to give license and encouragement to the selfish strong. What America specially needs is to train the young in a new ideal of life; to displace our selfish individualism and egotistical ambition by a sentiment of brotherhood and generous altruism.

The Twilight Zone

BY HENRY C. SPURR, Esq.,
Of the Rochester (N. Y.) Bar.

[In this article Mr. Spurr considers that undefined legal borderland known as the "Twilight Zone," and discusses the proposed extension of Federal power by construction into its domain.—Ed.]



ANY excuse will do for a tyrant, is the moral of the old fable, but necessity has always been the popular one. Acts of usurpation and flagrant disregard of binding law have generally been justified on the plea of the common good. The day of tyrants has, of course, gone by, but we still have with us a large body of citizens deeply interested in the common good, many of whom are chafing under the restraints of the Federal Constitution because it happens to stand in the way of certain of their activities for the general welfare. As the Constitution does impose, some formidable obstacles to the extension of Federal power in certain directions, and as easy amendment has not been provided for, we are beginning to hear as much in these days about the so-called unwritten Constitution as the palladium of popular rights, as we once did of the unwritten law in the defense of homicide.

Substitution of Unwritten for Written Law

The written law under the ban at the present time is to be found in the 10th Amendment to the Constitution, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The unwritten law which it is sought to substitute for the written law through executive action, through legislation, and through judicial interpretation and construction is that the United States has all the powers of national sovereignty not expressly denied. The necessity pleaded for supplanting the written law by the unwritten law is the difficulty of amending the written law, and the supposed fact that the court decisions

have left certain gaps between Federal and state powers which must be filled up in the interest of the common welfare,—a sort of twilight zone, a "neutral ground in which neither state nor nation can exercise authority, and which would become a place of refuge for men who wish to act against the interests of the community as a whole."

Inherent Federal Powers

The doctrine that the United States has all the powers of national sovereignty not expressly denied under the Constitution is derived by the advocates of this new school from decisions of the Supreme Court of the United States justifying the exercise of certain powers of the Federal government, on the ground that they are inherent in the United States as a sovereign nation. While the Supreme Court has announced the doctrine from time to time, that the general government is one of enumerated powers, and can exercise no authority not expressed or implied in the Constitution, it is idle to deny that authority for the exercise of certain powers held to belong to the general government is not to be found under any one of the express constitutional powers or powers that may be implied therefrom, but results by implication from a combination of these express powers; in other words, from the inherent powers of the United States as a nation. The acquisition of territory has been justified, for the most part, under the treaty or war making powers granted to the general government; but certain territory has been acquired by discovery or settlement, and the acquisition of such territory could have been justified only on the ground that the United States has inherent power as a nation to acquire territory in such a manner.

It does not follow, however, that the recognition of the fact that the United States is a sovereign nation requires the courts to hold that it has all the powers as such not expressly denied in the Constitution. The sovereign or ruling part of every state has two aspects, the external and the internal. In its external sovereignty, the state or nation is independent of all control from without; and in its internal aspect, it is paramount over all action within. When component states are equally united, their external sovereignty rests in no one of them, but in the government which results from their combination.¹ While certain of the powers expressly forbidden in the Federal Constitution to the individual states relate to acts of external sovereignty, it is doubtful if any of the thirteen original states ever possessed the full powers of sovereign states. They did not declare their independence as individual states, nor were they recognized as such. These external powers, such as they were, resulted from their combination. Conceding, however, that each of the states was a sovereign nation, it cannot be doubted that they intended to surrender all sovereign powers, so far as they relate to external affairs, to the general government. To deny that the United States has all the external powers inherent in a sovereign nation would be to deny the right of either the states or the general government to exercise such powers; and to hold that the general government has such powers is not in any way to set up a doctrine in conflict with the 10th Amendment to the Constitution.

Powers of Internal Sovereignty

It is not, however, to the powers of external sovereignty that the advocates of the new school of constitutional construction refer, but to the powers of internal sovereignty which have been distributed between the general government and the individual states. It is at this point that the doctrine comes in conflict with the 10th Amendment. When the thirteen colonies became independent of the mother country, they possessed at

least the full powers of internal sovereignty, and when the Constitution was adopted, these powers were distributed or partitioned between themselves and the United States. All the powers of internal sovereignty must reside either in the United States or in the several states, or else must be reserved to the people by being denied, either expressly or by implication, to both the United States and the states.

Is there a Vacant Zone?

But we are told that in the distribution of these powers certain vacancies have been left between Federal and state control which ought to be filled up. Theoretically, at least, it would seem that this could not be true. The burden of proof to show that there is such a vacant zone must be on those who allege its existence. What do the advocates of the new constitutional doctrine mean by the so-called vacant or twilight zone? Mr. Roosevelt's idea of the neutral zone may be gathered from the decisions cited by him in his address before the Colorado legislature, namely, the decision in the Knight Sugar Trust Case² and the New York Bake Shop Case.³ In the Sugar Case, the Supreme Court held in effect that the defendant company could not be dissolved as a monopoly in restraint of trade; that if the acts of the companies involved created a monopoly, it was a monopoly of manufacture, and not of commerce. "That which belongs to commerce," said the court, "is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the state." This, then, is plainly a decision that the United States only had no power to control the monopoly if it existed. It is not a decision that neither the United States nor the state had such power. There could not be a zone in this case, theoretically, at least, in which neither the United States nor the state could act. The argument, how-

² *United States v. E. C. Knight Co.* 156 U. S. 1, 39 L. ed. 325, 15 Sup. Ct. Rep. 249.

³ *Lochner v. People*, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 A. & E. Ann. Cas. 1133.

¹ Holland's Jurisprudence, p. 45.

ever, is that it is easier for the nation to act effectively in such a case than for an individual state, and that, therefore, if the nation is denied the power a twilight zone is created.

In the *Bake Shop Case* the court decided simply that the attempt to limit the hours of employment in bakeries was an arbitrary interference with the freedom of contract guaranteed by the 14th Amendment to the Constitution, it not appearing that the work in a bakery was such as to justify the exercise of the police power of the state to protect the public health, safety, morals, or general welfare. Mr. Roosevelt says of this decision: "In effect it reduced to impotence the only body which did have power, so that in this case the decision, although nominally against state rights, was really against popular rights, against the democratic principle of government by the people under the forms of law." So it seems the twilight zone created by this decision is simply a zone of activity expressly denied by the Constitution to the states, and also, by another provision, to the United States itself. We must not be side tracked by the debatable question whether certain acts are in fact violations of constitutional provisions. This must be left to the courts. They may not always decide with the greatest wisdom; but, since men must differ in opinion on such questions, there must be an umpire. It is the only means we have for the solution of the problems presented. This is the best substitute possible for war or force. The decision in the *Bake Shop Case*, then, is that certain acts cannot be done by the state because they interfere with the freedom of contract. The people have seen fit to deny to both the nation and the individual states the right to interfere with freedom of contract. As to this right, therefore, the people have expressly created a twilight zone, in which neither nation nor state can act.

Constitutionality of Extension of Federal Power

So it would appear that what is meant by Mr. Roosevelt by the twilight zone is:

first, a zone in which it is easier for the general government to act effectively than for the government of any of the individual states, but in which the Constitution forbids action by the general government, but permits it by the state governments, and, second, a zone in which the Federal Constitution forbids both the nation and the state to act. Therefore the extension of the power of the Federal government by executive action, by legislation, and by judicial construction into such a zone would be to override the plain provisions of the Constitution. Senator Root has made the position of the new school of constitutional constructionists plain by saying that "it is useless for the advocates of state rights to inveigh against the supremacy of the Constitutional laws of the United States, or against the extension of national authority in the fields of necessary control, where the states themselves failed in the performance of their duty." The doctrine of the new school is nothing less than a plea for a disregard of the plain provisions of the Constitution, on the ground of expediency,—a plea for the full powers possessed by the British Parliament, in spite of the denial of such powers by the supreme law of the land. Without meaning to be in the least disrespectful to the distinguished advocates of this doctrine, one can hardly fail to recall the confidential remark: "What is the Constitution between friends" which once set the whole country in a roar, and which made its author, the Honorable Timothy J. Campbell, famous. It now seems that this was not so bad after all. If the New York legislator had applied his idea to the Federal Constitution, had clothed his thought in more elegant diction, had spoken more learnedly of "unwritten" Constitutions, and referred to the Supreme Court as a "continuous constitutional convention," who knows but that he might have been assigned a high place in the constitutional history as the founder of this new school of constitutional construction. But it seems that this was not to be. Besides, like many another great dreamer, the Honorable Timothy J. Campbell was in advance of his time.

Shall the Republic Endure?

BY S. S. FIELD, Esq.,

Of the Baltimore (Md.) Bar.

[Mr Field asserts the gradual loss of power by the States, and shows how they may recover some of their lost prestige.—Ed.]



THE framers of the Constitution were unanimously of the opinion that the preservation of the state governments in full vigor and influence was essential to the perpetuation of the Republic.

Jefferson and Hamilton, the founders of opposing political schools, agreed in this.

Jefferson advocated "the support of the state governments in all their rights as the most competent administration for our domestic concerns, and the surest bulwarks against anti-republican tendencies."

And Hamilton said: "The state governments are essentially necessary to the form and spirit of the general system."

Hence the decline of the state, in power and influence, is a matter of deepest concern to all who love liberty and breathe the patriot's prayer: *Esto perpetua*.

The state, as a constituent element of our Republic, has sadly lost power and prestige, both absolutely and relatively.

Various causes have contributed to produce this condition; the chief being the civil war and its result.

Expansion of Federal Power and Jurisdiction.

Among the first fruits of the war-born theory of interpreting the Constitution was the establishment of the present national banking system. For, although Congress, under the influence of Hamilton, had before chartered banks, and the act had been sanctioned by the Supreme Court, the contention of Jefferson, that Congress had no such power, finally triumphed in Jackson's veto of the act to recharter the bank; and this view had been acquiesced in for more than a generation.

No attack is here intended upon the national banking system, which is too firmly established to be now questioned; my purpose being merely to point out that thereby the important power of creating banks of issue, theretofore exercised by the states, was taken from them and absorbed by the Federal government.

Recently there have been added Federal savings banks, and they are to be followed, many fear, by a gigantic central bank of issue.

Advancing, step by step, Congress has not only assumed the regulation of all interstate commerce, and also the regulation of all railroads and vessels carrying interstate commerce, but its power to incorporate companies to build bridges over navigable waters, and companies to build railroads for the transportation of interstate commerce, and the power to invade a state and occupy its territory for the purpose of building such bridges or railroads, has been upheld by the Supreme Court. And, lastly, so eminent a lawyer as our present President has given it as his official opinion that Congress has power to pass a law to provide for the incorporation of all kinds of private corporations engaging, or intending to engage, in interstate commerce, and has recommended the passage of such a law. Keeping in mind the growing tendency to carry on almost all business enterprises by means of corporations, and the fact that, with increased facilities for rapid transportation, nearly every kind of business may be said to be interstate commerce, the recommendation of the President is nothing less than a proposition for Congress to assume the regulation and control of practically all of the important business of the entire country.

We now have Federal inspectors to pass upon our food and medicines; there are advocates of a national bureau of health; others desire the Federal govern-

ment to build roads throughout the states; and still others propose that Congress should undertake, or assist in, the education of the people.

Thus step-by step has the Federal government, through its legislative arm, advanced its power and jurisdiction. The Federal judiciary has kept step with the onward march.

When the Supreme Court, early in its history, held that a state might be sued by a citizen in a Federal court, the decision alarmed the states, and led to an amendment changing the meaning of the Constitution as thus interpreted, on that point.

For a long time the power of the Supreme Court to review the decision of a state court, in any case, was vigorously disputed.

Nearly thirty years after the adoption of the Constitution of the United States, the supreme court of appeals of Virginia, after great consideration, solemnly declared: "The court is unanimously of opinion that the appellate power of the Supreme Court of the United States does not extend to this court; . . . and that obedience to its mandate is declined by this court." *Hunter v. Martin*, 4 Munf. 58.

Now, although the 11th Amendment still remains a part of the Constitution, a single, subordinate, Federal judge fulminates his injunction, like the thunders of Olympian Jove, against the attorney general, state's attorneys, sheriffs and clerks of courts of a state, forbidding them to execute a law of the state, duly passed in the exercise of its sovereignty. . . .

The exercise of jurisdiction by the Federal courts has been, and is, advancing by gigantic strides; due, in part, to the growth of the country; in part to new legislation; in part to the increasing number of foreign corporations doing business in a state, which, when sued, remove their cases into the Federal courts; in part to the fact that every corporation that wishes to set aside a law of a state goes into a Federal court for an injunction; and in part to the natural disposition of man to increase his authority and jurisdiction, when he has the power to do so. And the Federal judges

are men,—wise men, no doubt, and honorable and learned in the law; yet men.

The Federal Judiciary.

The Federal judiciary is the one illogical constituent in our system of government.

The fundamental theory of our Republic, that sovereignty resides in the people, and that public officers are but servants or agents of the sovereign people, vanishes when we stand in the presence of the Supreme Court of the United States, whose members hold office for life, and are answerable to no one save God and their consciences, and whose power extends to nullifying the highest acts of sovereignty of state and nation.

Jefferson was very apprehensive in regard to the power of the Federal judiciary. In a letter written a few years before his death, he said: "It has long been my opinion, and I have never shrunk from its expression (although I do not choose to put it into newspaper, nor, like a Priam in armor, offer myself its champion), that the germ of dissolution of our Federal government is in the Constitution of the Federal judiciary, an irresponsible body (for impeachment is scarcely a scarecrow) working, like gravity, by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction until all shall be usurped from the state, and the government of all be consolidated into one. To this I am opposed; because when all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided by one government on another, and will become as venal and oppressive as the government from which we separated."

Growth of Executive Power.

The legislative and judicial branches of the Federal government could not grow so great without a corresponding growth of the Executive. He appoints all the judges, marshals, and district at-

torneys, a small army of custom-house officers and internal revenue collectors, another army of secret service men, a large army of postmasters, a great retinue of ambassadors, and other foreign ministers, consuls, and agents, and all the officers of the Army and Navy, of both of which he is Commander-in-Chief.

If any President should see fit to use it, what a tremendous influence could he not exert, by means of executive patronage, over Congress and the courts!

Theoretically, the President is under the law, the Supreme Court has so declared,—by a majority of one; but is there no danger that, at some future time, some ambitious and popular man, returned from a foreign conquest, and elected President as the champion of the people, might feel that his powers were too great to be confined by a theory, and that, for the good of the people, he ought to be President for life?

The Supreme Court came within one vote of holding that the President of the United States was above the law; that the title to land taken possession of and held under his orders could not be inquired into or passed on by any court; a doctrine, said Mr. Justice Miller, speaking for the majority, that "sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights." *United States v. Lee*, 106 U. S. 221, 27 L. ed. 182, 1 Sup. Ct. Rep. 240.

Yet, if one judge had changed his mind, as afterwards occurred in the *Income Tax Case*, the Supreme Court would have sanctioned that same tyranny.

The little war with Spain gave another occasion to expand the Constitution to meet the new situation, resulted in an increase in our standing Army, gave a new impetus to the sentiment for a great Navy, and crowned the Federal government with a halo of world-power fame.

The sentiment perhaps is growing for a Federal Navy big enough to whip any other on earth, and if it triumphs, the next step will be for a proportionately great Federal Army. And the next step

will be to find something for the great Navy and great Army to do. . . .

How States may Increase Their Influence.

If we see danger to liberty and to the perpetuation of free institutions in the overgrown and still growing power of the Federal government, and the dwindling power of the states, it becomes our duty, as lovers of liberty and country, to conceive and suggest measures to avoid the danger.

Some simple preventives will at once suggest themselves to your minds.

Let the states build good roads, as Maryland is now doing; improve their systems of education; protect the health of their people; pass reasonable measures to protect the workmen in mines and factories; study means to get rid of the pests that destroy the farmers' crops; open banks where the people can intrust their money to the states, or provide for the guaranty of bank deposits; let there be annual meetings of the governors and attorneys general of the states for conference and for securing uniformity of state legislation, where desirable; in short, let the states get busy. The world moves so fast now, that laggards and drones, whether men or states, are left behind and are forgotten.

The notion that a government exists only for the purpose of collecting taxes and preventing people from hurting one another is out of date. If the state government will not occupy proper fields of governmental action in response to popular demand, the people will turn to the Federal government for relief. It is safe to say that very much of the field of governmental activity which has in recent years been occupied by the Federal government would have been left to the states, if they had been prior occupants.

By pursuing such measures, the states will increase in influence among the people, but it is believed that some direct safeguards are necessary to curtail the growing powers of the Federal government, and prevent it from becoming the vortex into which absolute power shall be absorbed.—From paper read before the Virginia and Maryland Bar Associations, July, 1910.

Republic or Democracy--Which?

BY LYNN HELM,

President of the California Bar Association.

[Mr. Helm protests against innovations that would change our republican form of government to a democracy, and urges that any alterations made in the fundamental law be brought about by an amendment of the Constitution, rather than by its strained and forced construction.—Ed.]

We should guard against revolutionary changes in the form of our government, and it is the duty of the Federal government to protect in each state of the Union a republican form of government. I cannot believe that the initiative, referendum, and recall are republican forms of government that should be protected under the guaranty of the Federal Constitution. While one republican form of government may be substituted for another, it seems to me that these innovations are so necessarily a democracy that they are easily distinguished from a republican form of government; they are anti-republican institutions, and are modifications of the fundamental structure of our government; they are nullifying and destroying of a representative government.

The Recall.

Of the recall, as much may be said; if it had been inserted in our fundamental law, even the great Washington, in the time of the French Revolution, would have been removed from office under the stress of public clamor, and the immortal Lincoln would have been swept from office upon the prayer of twenty millions of people as represented by Horace Greeley. It is now proposed to extend the recall even to the judges upon the bench,—then in whom will vest the judgment of the courts? Who will be the final arbiter of the affairs of men?

We might as well think of changing the complexion of the Supreme Court, to make their decisions conform to public clamor. Why not at once abolish all distinction between the executive, legislative, and judicial departments of the government, and do away forever with that greatest bulwark of a free people,—an independent judiciary?

So early a writer as Montesquieu de-

clared: "There is no liberty if the power of judging be not separated from the legislative and executive powers. If it were joined to the legislative power, authority over the life and liberty of citizens would be arbitrary; for the judge would be the legislator. If it were joined to the executive authority, the judge would have the power of a tyrant."

An independent judiciary has been granted by the will of the sovereign people as expressed in their several Constitutions. If this guaranty should not be kept effective, I cannot conceive of any other result than anarchy.

Sufficiency of Republican Government.

But I do not look for any revolution from this source. It has been caused by the idea that there has been corruption among the representatives of the people, and their too great subserviency to corporations and the great moneyed interests, which have opposed any attempt to place them under effective government control; that the tendency of American legislation has been to consider the prosperity of certain classes as an end in itself, and to ignore equal and concurrent branches of industry. But the people have awakened to their rights in the premises; they have come into their own, and have again elected representatives of their own choosing, are enjoying a free suffrage; and corporate power has been checked; and, treating with the large moneyed class and corporations as individuals, as proposed by the learned Woodrow Wilson, we shall soon accomplish much in doing away with class distinctions.

The people, recognizing that the government is popular because it truly reflects the will of the people, will no longer clamor for a democracy, but will dwell contented under a republican govern-

ment, which has not alone weathered the storm of civil conflict, but has justly commanded the admiration of the world. The pendulum will swing back. A republican form of government serves our purposes, and gives us a commanding position among the nations of the world.

Reform Under Constitution.

As lawyers we are not advocates of disintegration. We may be conservative and at the same time progressive. It may be that the Federal Constitution has great powers of resistance to all reforms; it has been able to stand the strain even against violent agitation. Of all the features of the American Union, that which moves our admiration most is that we have had a Constitution which has been sufficient for our purpose and which has withstood the fiercest trials; under it the American people have had the wisdom to plan and the courage to succeed in establishing and preserving order and freedom. The Constitution is a written charter filled with the spirit of life.

The people of the United States, free and independent, have an original right to establish for their future government such principles as in their opinion shall most conduce to their own security and happiness. This is the basis of the whole American Union, and, while it cannot be frequently repeated, if changes are to be made in the fundamental law they must be done by an amendment of the Constitution, and not by a strained and forced construction thereof. For the purpose of limiting different departments of the government, limitations were committed to writing, and the Constitution thus adopted is the superior paramount law, unchangeable by ordinary means, and not alterable at the will of any of the de-

partments of the government. Certain limits are not to be transcended by the departments of the government.

We are not jealous of the desire of the people to take part in the enactment of laws. In making any objection to the exercise by the people of the initiative, referendum, or recall, we are not trying to stand off a revolution. A revolution will not come from this agitation and clamor of the people for a more popular government, but the effect will be to make the people of this Union have a greater realization of their right in a free suffrage. In a free government it is of essential importance that the right of suffrage should be free. When the people have recognized their rights in this respect they will have greater opportunity in the selection of their representatives. To vote for their representatives freely is to perform the highest act of original sovereignty. Upon this foundation will rest the prolongation of the spirit of this republican form of government.

Constitutional Government.

That the people of this Union may continue to be governed by the forms prescribed by the Constitution, and that the fundamental law shall not be violated, is the desire which animates the hearts of all American lawyers. Their first wish, however, is that the people may be free. The American citizen lives in a land "with a government of laws, and not of men; conformable to nature, conceived in wisdom, administered with justice, and clothed with power."—From address entitled "Nationalism: A Study of the American Union," delivered before the Nebraska Bar Association, December 28th, 1910.



Insanity as a Defense in Homicide Cases

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[The preceding portion of Mr. Bowlby's valuable article appeared in the]
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Insane delusions.

An insane delusion, within the meaning of the criminal law, is an unreasonable and incorrigible belief in the existence of facts which are either impossible absolutely, or impossible under the circumstances of the case;⁶⁴ a fixed belief which is contrary to universal experience and known natural laws;⁶⁵ a belief in the existence of facts in which no rational person would believe.⁶⁶ But a belief founded upon reason and reflection is not an insane delusion, however absurd it may be,⁶⁷ though a belief upon the part of a person accused of crime, that he had not slept for eight years, is an insane delusion on that subject.⁶⁸

One who is led to the commission of a criminal act by an insane delusion controlling the will and judgment is not criminally responsible therefor;⁶⁹ but a delusion is no excuse for a criminal act when the act is in no way connected with the delusion, and not produced by it.⁷⁰ And the fact that a person has an insane delusion upon one subject does not affect his responsibility for a crime with reference to other matters, not connected with the particular delusion, where he is capable of distinguishing between right and wrong as to the particular act.⁷¹ The test of criminal responsibility in case of delusion, conforming most closely both to reason and authority, is the capacity to distinguish between right and wrong at the time of the commission of the criminal act in question, with respect to such act, and the absence of insane delusion with reference to that subject.⁷² The question is,

Did he do the act under a delusion, believing it to be other than it was;⁷³ and the delusion, to be a defense, must have been total, not merely partial.⁷⁴ The existence of an insane delusion is no defense unless it rendered the person incapable of knowing what he was doing, or forming a criminal intent;⁷⁵ and the existence of an insane delusion is important in a criminal prosecution only as it throws light upon the question of knowledge or capacity of the party to know right from wrong.⁷⁶ So, to be a defense to a charge of homicide or other criminal act, an insane delusion must be objective, as distinguished from subjective; the objective delusion being a delusion of the senses, or such as relate to facts or objects, being visual or other sensual mistakes, as distinguished from subjective delusions, which are mere delusions as to matters of personal duty; and the delusion, to be a defense, must involve an honest mistake as to the object at which the crime is directed.⁷⁷ Delusions of danger are objective delusions; and one is not criminally responsible for a homicide, where it was committed under the delusion that the person killed was about to do him a serious personal injury, and that he was acting in self-defense.⁷⁸ And a delusion upon the part of one person that another was a robber who had entered his house, under which delusion he killed the supposed robber, is objective and a good defense.⁷⁹ But a belief upon the part of a person as to the right and wrong and as to the justifiableness of his acts, though mistaken and sincere, does not constitute a delusion which will excuse a criminal act.⁸⁰ With reference to subjective delusions, another test must be taken; such delusions are no defense unless they are insane. And if there is reason enough to dispel the delusion, and the party refuses to listen to arguments by which the delusion could be dispelled, and cherishes such delusion, and

⁶⁴ *State v. Lewis*, 20 Nev. 333, 22 Pac. 241, 8 Am. Crim. Rep. 574; *Guiteau's Case*, supra.

⁶⁵ *Com. v. Meredith*, 14 W. N. C. 188.

⁶⁶ *Ibid*.

⁶⁷ *Guiteau's Case*, supra; *Cannon v. State*, 41 Tex. Crim. Rep. 467, 56 S. W. 351.

⁶⁸ *United States v. King*, 34 Fed. 302.

⁶⁹ *Stevens v. State*, 31 Ind. 486, 99 Am. Dec. 634; *State v. Miller*, supra.

⁷⁰ *State v. Jones*, 50 N. H. 369, 9 Am. Rep. 242; *State v. Lawrence and Boward v. State*, supra; *State v. Simpson*, 71 Mo. 538; *Hawes v. State*, 11 Neb. 537, 38 Am. Rep. 375, 10 N. W. 452.

⁷¹ *State v. Windsor*, 5 Harr. (Del.) 512; *State v. Lawrence*, supra; *People v. Ferraro*, 161 N. Y. 365, 55 N. E. 931; *Com. v. Mosler*, 4 Pa. 264; *Wilcox v. State*, 94 Tenn. 106, 28 S. W. 312; *Merritt v. State*, 39 Tex. Crim. Rep. 70, 45 S. W. 21, 11 Am. Crim. Rep. 518; *United States v. Ridgeway*, 31 Fed. 144.

⁷² *Casey v. People*, 31 Hun, 158; *Parsons v. State*, 81 Ala. 577, 60 Am. Rep. 193, 2 So. 854, 7 Am. Crim. Rep. 266; *State v. Mewherter*, 46 Iowa, 88; *State v. Murray*, 11 Or. 413, 5 Pac. 55; *Wilcox v. State* and *Bellingham's Case*, supra.

⁷³ *R. v. Townley*, 3 Fost. & F. 839.

⁷⁴ *Humphreys v. State*, 45 Ga. 190.

⁷⁵ *Hall v. Com. v. Sadler* (Pa.), 279, 22 W. N. C. 25, 12 Atl. 163.

⁷⁶ *Guiteau's Case*, 10 Fed. 161.

⁷⁷ *R. v. Burton*, 3 Fost. & F. 772; *State v. Pike*, 49 N. H. 399, 6 Am. Rep. 533; *Willis v. People*, 5 Park. Crim. Rep. 622.

⁷⁸ *People v. Taylor*, 138 N. Y. 398, 34 N. E. 275; *Com. v. Rogers*, 7 Met. 500, 41 Am. Dec. 458; *Merritt v. State*, 39 Tex. Crim. Rep. 70, 45 S. W. 21, 11 Am. Crim. Rep. 518.

⁷⁹ *Levett's Case*, Cro. Car. 538.

⁸⁰ *Com. v. Wireback*, 190 Pa. 138, 70 Am. St. Rep. 625, 42 Atl. 542.

makes it a pretext of wrongs to others, he is responsible for such wrongs, and it is allowable, in a prosecution in which an insane delusion is set up for a defense, to give evidence that the delusion was sane, or, in other words, was an opinion which ordinary processes of reasoning might have produced.⁸¹ A common illustration of a subjective delusion is the claim of the Mormon prophets of a direct revelation permitting them to practise polygamy. They would not be permitted to plead their delusion, since they are sane, shrewd men, and must be held responsible for their delusions. Likewise, a delusion, to be a defense against a charge of homicide, or other criminal act, must be such that, if the thing believed in by the deluded person were true, it would be an excuse; if it were true, and would be no excuse to a sane man, the perpetrator is criminally responsible.⁸² And criminal responsibility is relieved only when the facts or state of facts believed in under the influence of the delusion would, if actually existing, have justified the act and rendered it excusable.⁸³ One is criminally responsible for an act committed while laboring under the delusion that he was redressing or avenging some injury or grievance, or producing or obtaining some profit or public benefit, or that another was exercising a malign influence over him.⁸⁴ And a person who kills another is not relieved from responsibility by a delusion that the latter was trying to marry his mother, against her will, since that, if true, would not warrant the killing.⁸⁵ And an insane delusion entertained by a convict, that another convict was spying upon him with intent to betray his plans of escape from the prison, does not affect the consequences of his act in killing him.⁸⁶ But one who commits a crime under the delusion that God has commanded him to do it is not criminally responsible therefor;⁸⁷ though a belief in spirits upon the part of the accused, and that spirits whispered to him and bade him do the criminal act in question, furnishes no defense, though it may be evidence for the jury upon which to base its judgment with regard to his understanding and comprehension.⁸⁸

Irresistible impulse.

An irresistible impulse, in the law of insanity, is an irresistible inclination to kill, or commit some other offense, consisting of some un-

seen pressure on the mind, drawing it to consequences which it sees, but cannot avoid; holding it under coercion, so that, while it clearly perceives the results, it is incapable of resisting.⁸⁹ The impulse, to operate as a defense, must be an insane one, as distinguished from passion.⁹⁰ Some jurisdictions have repudiated the doctrine of irresistible impulse as a defense for homicide, either partially or entirely. In Illinois, however, it is held to be the rule that where the insanity was the efficient cause of the act, and the act would not have been done but for the affection, the accused should be acquitted; but the unsoundness of mind must be of such a degree as to create an uncontrollable impulse to do the act charged by overriding the reason and judgment, and obliterating the sense of right and wrong as to the particular act done, and depriving the accused of the power of choosing between them.⁹¹ And in a number of states the true test has been said to lie in the word "power;" has the accused power to distinguish right and wrong, and the power to adhere to the right and avoid the wrong?⁹² So, insane irresistible impulse is regarded as a defense in Ohio, Minnesota, Kentucky, and Iowa.⁹³ And the Supreme Court of the United States has made decisions to the same effect.⁹⁴ And New Hampshire, Delaware, Connecticut, Texas, and Alabama, and other states, have adopted the same rule.⁹⁵ There are two constituent elements of legal responsibility for crime: first, capacity of intellectual discrimination; and second, freedom of will.⁹⁶ And an exception to the general rule of criminal responsibility exists under that doctrine where one has sufficient reason to distinguish between right and wrong as to the particular act to be committed, but, in consequence of some delusion, the will is overmastered, and there is no criminal intent.⁹⁷ Even under this rule, however, irresistible impulse is not a defense in a criminal prosecution unless it subjugates the intellect, controls the will, and renders it impossible for the person to do otherwise

⁸⁹ *Dejarnette v. Com.* 75 Va. 867; *Flanagan v. People*, 52 N. Y. 467, 11 Am. Rep. 731.

⁹⁰ *McCarty v. Com.* 114 Ky. 620, 71 S. W. 656.

⁹¹ *Dunn v. People*, 109 Ill. 635, 4 Am. Crim. Rep. 52; *Dacey v. People*, 116 Ill. 555, 6 N. E. 165, 6 Am. Crim. Rep. 461.

⁹² *Com. ex rel. Haskell v. Haskell*, 2 Brewst. (Pa.) 491; *Grubb v. State*, 117 Ind. 277, 20 N. E. 257, 725.

⁹³ *Blackburn v. State*, 23 Ohio St. 146; *State v. Gut*, 13 Minn. 341, Gil. 315; *Abbott v. Com.* 107 Ky. 624, 55 S. W. 196; *State v. Felter*, 25 Iowa, 67.

⁹⁴ *Mutual L. Ins. Co. v. Terry*, 15 Wall. 580, 21 L. ed. 236; *Davis v. United States*, 165 U. S. 373, 41 L. ed. 750, 17 Sup. Ct. Rep. 360; *United States v. Hewson*, Brunner, Col. Cas. 532, Fed. Cas. No. 15,360; *Guiteau's Case*, 10 Fed. 161.

⁹⁵ *State v. Jones*, 50 N. H. 369, 9 Am. Rep. 252; *State v. Cole*, 2 Penn. (Del.) 344, 45 Atl. 391; *State v. Johnson*, 40 Conn. 136; *King v. State*, 9 Tex. App. 515; *Lide v. State*, 133 Ala. 43, 31 So. 953; and see *People v. Finley*, 38 Mich. 482; *State v. Peel*, 23 Mont. 358, 75 Am. St. Rep. 529, 59 Pac. 169; *Lowe v. State*, 118 Wis. 641, 96 N. W. 417.

⁹⁶ *Parsons v. State*, 81 Ala. 577, 60 Am. Rep. 193, 2 So. 854, 7 Am. Crim. Rep. 266; *Farrer v. State*, 2 Ohio St. 54.

⁹⁷ *Taylor v. State*, 105 Ga. 746, 31 S. E. 764; *Lide v. State*, 133 Ala. 43, 31 So. 953; *State v. Cole*, 2 Penn. (Del.) 344, 45 Atl. 391.

⁸¹ *Com. ex rel. Haskell v. Haskell*, 2 Brewst. (Pa.) 491.

⁸² *State v. Mewherter*, 46 Iowa, 88; *M'Naughten's Case*, 10 Clark & F. 200.

⁸³ *Boswell v. State*, 63 Ala. 307, 35 Am. Rep. 20; *Smith v. State*, 55 Ark. 259, 18 S. W. 237; *People v. Hubert*, 119 Cal. 216, 63 Am. St. Rep. 72, 51 Pac. 329; *Com. v. Rogers*, supra; *Cunningham v. State*, 56 Miss. 269, 31 Am. Rep. 360; *Thurman v. State*, 32 Neb. 224, 49 N. W. 338; *People v. Taylor*, 138 N. Y. 398, 34 N. E. 275; *Com. v. Freeth*, 5 Clark (Pa.) 455; *Merritt v. State*, supra.

⁸⁴ *Humphreys v. State*, 45 Ga. 190; *M'Naughten's Case*, supra.

⁸⁵ *Bolling v. State*, 54 Ark. 588, 16 S. W. 658.

⁸⁶ *People v. Taylor*, 138 N. Y. 398, 34 N. E. 275.

⁸⁷ *Guiteau's Case* and *Com. v. Rogers*, supra.

⁸⁸ *People v. Waltz*, 50 How. Pr. 204.

than to yield.⁹⁸ The test in such case is whether the accused had sufficient reason to know right from wrong, and whether or not he had sufficient power to control and govern his actions and resist his morbid inclination to perpetrate the offense.⁹⁹ An act is punishable though committed by one under an irresistible impulse, where his mental faculties were in a sound normal condition;¹⁰⁰ and a person with no mental disorder, who commits a criminal act from overmastering anger, jealousy, or revenge, is responsible therefor.¹⁰¹ The question whether the insane impulse was irresistible is one of fact for the jury.¹⁰²

There seems to be no question, however, that the position that an irresistible impulse can be a defense is inconsistent with the rule laid down in the great body of cases which sustain the right-and-wrong test as an exclusive standard of criminal responsibility of persons claimed to be insane, and the courts of a number of the states have adopted the rule that irresistible impulse alone is no excuse for crime when the person is able to distinguish between right and wrong.¹⁰³ The test of responsibility in jurisdictions not recognizing irresistible impulse as a defense is the usual one,—whether the accused could distinguish between right and wrong, and knew what he was doing, and that it was wrong.¹⁰⁴ But

even under this rule, where there is an uncontrollable impulse to do a criminal act, so great as to deprive the person of the ability to distinguish right from wrong in regard to that particular act, the person is irresponsible.¹⁰⁵

Moral insanity.

Moral insanity is defined to be a morbid state of the affections and passions, or unsettling of the moral system, the mental faculties remaining normal and sound,—¹⁰⁶ an irresistible impulse to commit a criminal act, co-extensive with mental sanity.¹⁰⁷ In England the doctrine of moral insanity, so far as it involves the idea of irresponsibility based exclusively on moral, as distinguished from mental, derangement, is rejected by the courts.¹⁰⁸ And in the United States there is almost a unanimous refusal of judicial recognition of this theory, and the almost universal tendency is to hold that no amount of derangement of morals is a defense unless accompanied by mental insanity. This has been held in effect in Massachusetts, Maine, Connecticut, New York, New Jersey, Delaware, Virginia, North Carolina, Georgia, Ohio, and California.¹⁰⁹ And decisions have been rendered to the same effect in other jurisdictions where the question has been mooted.¹¹⁰ Mere moral obliquity of the propensities will not protect a person from punishment for a criminal act;¹¹¹ nor will a mere perversion of the affections.¹¹² And if, from evil association and indulgence in vice, a person's conscience ceases to control or influence his actions, but he is otherwise capable of committing crime, he is criminally responsible,—¹¹³ criminal responsibility depending, not upon the power to refrain from doing what is known to be wrong, but whether the accused, at the time of committing the act, knew its character and nature,

⁹⁸ *State v. Windsor*, 5 Harr. (Del.) 512; *Meyer v. People*, 156 Ill. 126, 40 N. E. 490; *Grubb v. State*, 117 Ind. 277, 20 N. E. 257, 725; *State v. Mewherter*, 46 Iowa, 88; *Scott v. Com.* 4 Met. (Ky.) 227, 83 Am. Dec. 461; *State v. Jones*, 50 N. H. 369, 9 Am. Rep. 242; *Taylor v. Com.* 109 Pa. 262; *Wilcox v. State*, 94 Tenn. 106, 28 S. W. 312; *Leache v. State*, 22 Tex. App. 279, 58 Am. Rep. 638, 3 S. W. 539; *Com. v. Jones*, 1 Leigh, 612.

⁹⁹ *Parsons v. State*, 81 Ala. 577, 60 Am. Rep. 195, 2 So. 854, 7 Am. Crim. Rep. 266; *Williams v. State*, 50 Ark. 517, 9 S. W. 5; *State v. Reidell*, 9 Houst. (Del.) 470, 14 Atl. 550; *Hornish v. People*, 142 Ill. 620, 32 N. E. 677, 18 L.R.A. 237; *Plake v. State*, 121 Ind. 433, 16 Am. St. Rep. 408, 23 N. E. 273; *Montgomery v. Com.* 88 Ky. 509, 11 S. W. 475; *State v. Hundley*, 46 Mo. 414; *Burgo v. State*, 26 Neb. 639, 42 N. W. 701; *State v. Hansen*, 25 Or. 391, 35 Pac. 976, 36 Pac. 296; *Blackburn v. State*, 23 Ohio St. 146; *Com. ex rel. Haskell v. Haskell*, 2 Brewst. (Pa.) 491.

¹⁰⁰ *Boswell v. State*, 63 Ala. 307, 35 Am. Rep. 20; *State v. Mewherter*, 46 Iowa, 88; *Leache v. State*, 22 Tex. App. 279, 58 Am. Rep. 638, 3 S. W. 539.

¹⁰¹ *Bolling v. State*, 54 Ark. 588, 16 S. W. 658; *Plake v. State*, 121 Ind. 433, 16 Am. St. Rep. 408, 23 N. E. 273; *State v. Felter*, 25 Iowa, 67; *Fitzpatrick v. Com.* 81 Ky. 357; *People v. Durfee*, 62 Mich. 487, 29 N. W. 109; *Sayres v. Com.* 88 Pa. 291.

¹⁰² *State v. Jones*, 50 N. H. 369, 9 Am. Rep. 242; *Grubb v. State*, 117 Ind. 277, 20 N. E. 257, 725; *People v. Egnor*, 175 N. Y. 419, 67 N. E. 906.

¹⁰³ *State v. Brandon*, 53 N. C. (8 Jones, L.) 463; *Green v. State*, 64 Ark. 523, 43 S. W. 973; *People v. Hubert*, 119 Cal. 216, 63 Am. St. Rep. 72, 52 Pac. 329; *State v. Yarborough*, 39 Kan. 581, 18 Pac. 474; *State v. Knight*, 95 Me. 467, 50 Atl. 276, 55 L.R.A. 373; *Spencer v. State*, 69 Md. 28, 13 Atl. 809; *State v. Dunn*, 179 Mo. 95, 77 S. W. 848; *Mackin v. State*, 59 N. J. L. 495, 36 Atl. 1040; *People v. Carpenter*, 102 N. Y. 238, 6 N. E. 584; *State v. Alexander*, 30 S. C. 74, 14 Am. St. Rep. 879, 8 S. E. 440; *Cannon v. State*, 41 Tex. Crim. Rep. 467, 56 S. W. 352; *United States v. Faulkner*, 35 Fed. 730; *R. v. Haynes*, 1 Fost. & F. 666.

¹⁰⁴ *State v. Bundy*, 24 S. C. 439, 58 Am. Rep. 263; *Green v. State*, supra; *State v. O'Neil*, 51 Kan. 651, 33 Pac. 287, 24 L.R.A. 555; *Com. v. Rogers*, 7 Met. 500, 41 Am. Dec. 458; *State v. Scott*, 41 Minn. 365, 43 N. W. 62; *Cunningham v.*

State, 56 Miss. 269, 21 Am. Rep. 360; *Wilcox v. State*, 94 Tenn. 106, 28 S. W. 312; *State v. Harrison*, 36 W. Va. 729, 15 S. E. 982, 9 Am. Crim. Rep. 626, 18 L.R.A. 224.

¹⁰⁵ *Wright v. People*, 4 Neb. 407; *Com. v. Rogers and Cunningham v. State*, supra; *People v. Kleim*, 1 Edm. Sel. Cas. 13.

¹⁰⁶ *Beasley v. State*, 50 Ala. 149, 20 Am. Rep. 292.

¹⁰⁷ *Boswell v. State*, 63 Ala. 307, 35 Am. Rep. 20; *State v. Potts*, 100 N. C. 457, 6 S. E. 657.

¹⁰⁸ *R. v. Oxford*, 9 Car. & P. 525; *R. v. Barton*, 3 Cox, C. C. 275.

¹⁰⁹ *Com. v. Rogers*, supra; *State v. Lawrence*, 57 Me. 574; *State v. Richards*, 39 Conn. 591; *Freeman v. People*, 4 Denio, 9, 47 Am. Dec. 216; *State v. Spencer*, 21 N. J. L. 196; *State v. Windsor*, 5 Harr. (Del.) 512; *Vance v. Com.* 2 Va. Cas. 132; *State v. Potts*, supra; *Fogarty v. State*, 80 Ga. 450, 5 S. E. 782; *State v. Gardiner*, *Wright (Ohio)* 392; *People v. Mettewer*, 132 Cal. 326, 64 Pac. 481.

¹¹⁰ See *Cawley v. State*, 133 Ala. 128, 32 So. 227; *Green v. State*, 64 Ark. 523, 43 S. W. 973; *Davis v. State*, 44 Fla. 32, 32 So. 822; *State v. Yarborough*, 39 Kan. 581, 18 Pac. 474; *State v. Coleman*, 27 La. Ann. 691; *Spencer v. State*, 69 Md. 28, 13 Atl. 809; *Cunningham v. State*, 56 Miss. 269, 31 Am. Rep. 360; *State v. Miller*, 111 Mo. 542, 20 S. W. 243; *Schwartz v. State*, 65 Neb. 196, 91 N. W. 190; *Harrison v. State*, 44 Tex. Crim. Rep. 164, 69 S. W. 500.

¹¹¹ *Taylor v. Com.* 109 Pa. 262.

¹¹² *Goodwin v. State*, 96 Ind. 550.

¹¹³ *Green v. State*, supra.

and that it was a wrongful one.¹¹⁴ In a few states, however, the courts have recognized a mental dualism in man, consisting of an intellectual and a moral nature, and recognized that the existence of a type of moral, as distinguished from intellectual, insanity, such as homicidal mania, or an uncontrollable appetite for mankilling, or pyromania or kleptomania, may operate as an excuse for a criminal act.¹¹⁵ And a Connecticut case, though denying the purpose of recognizing this form of insanity as an excuse for crime, did recognize it to the extent of holding that, when satisfied of its existence, a court should consider it in determining the degree of the crime, and give it such weight as it is fairly entitled to under the circumstances.¹¹⁶ and though apparently confounded with irresistible impulse, the existence of moral insanity, and the fact that it might operate as an excuse for a criminal act, in a proper case, have also been recognized in Pennsylvania.¹¹⁷ But even the courts admitting that moral insanity may be a defense to crime hold that evidence of its existence is to be received with great caution.¹¹⁸ And the utmost care should be taken by the court in presenting to the jury the legal principles relating to it.¹¹⁹ The doctrine of moral insanity as a ground for immunity from criminal responsibility is regarded as dangerous, and can be recognized only in the clearest cases, and the disturbance ought to be shown to have been habitual to be effectual.¹²⁰ And moral insanity ought never to be admitted as a defense in a criminal prosecution unless it appears that the propensity existed with such violence as to subject the intellect, control the will, and render it impossible for the party to do otherwise than yield.¹²¹

Degree of crime as affected by insanity.

Under the modern rule on the subject of insanity as a defense to homicide or other crime, there is not deemed to be any condition intermediate between sanity and insanity which will mitigate crime without excusing it.¹²² And where a person committing a homicide was conscious of what he was doing, and capable of distinguishing between right and wrong, and premeditated the commission of the act, he is guilty of murder in the first degree, though he was deranged.¹²³ Nor can a

conviction of a lower degree of crime be had on the theory that the defendant's mind was unsound to a degree rendering him incapable of deliberation, where he knew the nature of the act.¹²⁴ And insanity cannot reduce homicide from murder to manslaughter unless the provocation was such at least as would stir the resentment of a reasonable man.¹²⁵ Evidence of insanity is admissible in such cases, however, to show the absence of any deliberate or premeditated design.¹²⁶ And an instruction in a prosecution for homicide, that, if the accused was insane at the time of the act, the jury must declare him not guilty, without reference to the degree of insanity, is too broad, and cannot be sustained.¹²⁷ One who killed another when his mind was so far impaired as to render him incapable of deliberate, premeditated murder, but who was not totally irresponsible by reason of his insanity, should be convicted of murder in the second degree only.¹²⁸ And evidence of excitement and abnormal sensitiveness resulting from sunstroke and a fall, and other accidents, though not sufficient to establish irresponsibility, is sufficient to reduce the homicide from murder in the first, to murder in the second, degree.¹²⁹

"In jurisdictions in which irresistible impulse, the mind being sane, is regarded as no defense to a homicide or other crime, violent passion is still to be taken into account as a mitigating element, and the peculiar temperament of the offender is to be gauged for the purpose of estimating whether the provocation was such as would create hot blood, and whether there was adequate cooling time. A sane person may, from epilepsy, or from prior insanity, or from nervous or physical derangement, or from hereditary taint, be peculiarly susceptible to excitement. And as the law treats assaults committed in hot blood as of a lower grade than those committed deliberately, this excitability may properly be considered in determining whether the blood at the time was hot. Hence, epileptic, nervous, and cerebral diseases, and hereditary tendencies may be put in evidence to lower the grade of the offense, though they do not amount to insanity. This is but following the authorities which declare that drunkenness, though no defense to crime, may be used to show that an assault was not deliberate."¹³⁰

¹¹⁴ *State v. Bundy*, 24 S. C. 439, 58 Am. Rep. 263; *Green v. State* and *Schwartz v. State*, supra; *Cole's Trial*, 7 Abb. Pr. N. S. 321; *United States v. Faulkner*, 35 Fed. 730; *R. v. Barton*, 3 Cox, C. C. 275.

¹¹⁵ *Smith v. Com.* 1 Duv. 224; *Scott v. Com.* 4 Met. (Ky.) 227, 83 Am. Dec. 461; *St. Louis Mut. L. Ins. Co. v. Graves*, 6 Bush, 268.

¹¹⁶ *Anderson v. State*, 43 Conn. 514, 21 Am. Rep. 669.

¹¹⁷ *Com. v. Mosler*, 4 Pa. 264; *Coyle v. Com.* 100 Pa. 573, 45 Am. Rep. 397.

¹¹⁸ *Com. v. Mosler*, supra.

¹¹⁹ *Scott v. Com.* supra.

¹²⁰ *Coyle v. Com.* and *Com. v. Mosler*, supra.

¹²¹ *Scott v. Com.* supra; *Com. v. Werling*, 164 Pa. 559, 30 Atl. 406; *Ortwein v. Com.* 76 Pa. 418, 18 Am. Rep. 420, 1 Am. Crim. Rep. 297.

¹²² *Sage v. State*, 91 Ind. 141; *United States v. Lee*, 4 Mackey, 489, 54 Am. Rep. 293; *State v. Kotovsky*, 11 Mo. App. 584; *Sindram v. People*, 1 N. Y. Crim. Rep. 448.

¹²³ *Nevling v. Com.* 98 Pa. 323.

¹²⁴ *State v. Kotovsky*, supra; *Jarvis v. State*, 70 Ark. 613, 67 S. W. 76; *Osburn v. State*, 164 Ind. 262, 73 N. E. 601; *Com. v. Barner*, 199 Pa. 335, 49 Atl. 60; *Cornell v. State*, 104 Wis. 527, 80 N. W. 745.

¹²⁵ *Horton v. United States*, 15 App. D. C. 310; *People v. Hurtado*, 63 Cal. 288.

¹²⁶ *Sindram v. People* and *Sage v. State*, supra; *Hampton v. State*, 111 Wis. 127, 86 N. W. 596, 12 Am. Crim. Rep. 657; *Youtsey v. United States*, 38 C. C. A. 562, 97 Fed. 937.

¹²⁷ *People v. Best*, 39 Cal. 690.

¹²⁸ *Anderson v. State*, 43 Conn. 514, 21 Am. Rep. 669; *Cottell v. State*, 12 Ohio C. C. 467; *Pistorius v. Com.* 84 Pa. 158, 2 Am. Crim. Rep. 284; *Boren v. State*, 32 Tex. Crim. Rep. 637, 25 S. W. 775; *Conroy v. Jarvis v. State*, supra; *Com. v. Hollinger*, 190 Pa. 155, 42 Atl. 548; *Com. v. Barner*, supra.

¹²⁹ *People v. Conroy*, 33 Hun, 119.

¹³⁰ *Wharton, Homicide*, 3d ed. § 540; *Wharton & S. Med. Jur.* 5th ed. § 194.

Relative functions of court and jury as to defense of insanity.

There has been a variety of theories on the question whether the definition and existence of insanity which will excuse crime is a question of law for the court, or of fact for the jury, and there are cases which seem to hold that all the questions connected with the question of insanity as a defense for crime are questions of fact.¹³¹ And it has been claimed that the opinion of experts in the matter of insanity is the only reliable test of the existence of insanity. It is to be observed, however, that the question of guilt or innocence does not depend upon the question of sanity or insanity, but upon that of responsibility or irresponsibility; and one may be innocent to some degree, and yet not irresponsible to the law for his acts.¹³² Criminal responsibility is necessarily, therefore, a question of law, though complicated probably in all cases more or less by questions of fact; and the practice of dividing the functions between the court and jury in each particular case, according to its own facts, is gaining strength; and the rule seemingly supported by the preponderance of modern authority is that the question as to how much intellect, understanding, judgment, and comprehension a man must have to make him amenable to the law with respect to a criminal act is one of law for the court.¹³³ And the sanity of a person who pleads guilty is an issue for the court, and is required to be shown before he can be convicted, and evidence of such sanity should be introduced at the time of the plea.¹³⁴ But the question of the existence of such insanity as will excuse the crime in question, where the commission of the criminal act is established, is one of fact for the jury,¹³⁵ under proper instructions,¹³⁶ to be submitted to and determined by it like any other fact in the case.¹³⁷ And it is a question for the jury to determine whether the mental condition of the accused was such that he was incapable of a specific intent to take life;¹³⁸ and the weight and sufficiency of evidence to establish the defense of insanity are questions exclusively for the

jury,¹³⁹ and the verdict or finding will not be disturbed where the evidence as to insanity was conflicting.¹⁴⁰ It is not improper for the court to tell the jury that the defense of insanity should be examined with caution.¹⁴¹

Likewise, the rule that the question as to how much intellect one must have to make him amenable to the criminal law is one for the court, and that the existence of insanity which will excuse crime is a question of fact for the jury, applies to temporary or periodical insanity.¹⁴² But it is a question for the jury whether the accused in a criminal prosecution labored under the influence of a delusion which rendered his mind insensible to the nature of his act;¹⁴³ and whether or not a criminal act was done by a person subject to temporary or recurrent insanity, during a fit of madness, is a question for the jury.¹⁴⁴ So, all symptoms of delusion or mental disease are matters of fact for the jury,¹⁴⁵ and so are questions as to the existence and effect on the mind of insanity which subverts the freedom of the will, and destroys the power of the victim to choose between right and wrong, though he may be able to perceive the difference between them.¹⁴⁶ And where insanity is alleged as a defense in a homicide case, the question as to whether the accused was guilty of murder in the first or second degree should be submitted to the jury, as well as the question whether or not he was innocent.¹⁴⁷

Proof to establish insanity conclusive.

Positive and direct testimony is not required to establish insanity as a defense;¹⁴⁸ nor is proof of specific acts of derangement.¹⁴⁹ And one may be acquitted on the ground of insanity though he objected to that defense, and asserted that he was not insane, and called witnesses to establish his sanity, where the whole evidence justifies a finding of insanity.¹⁵⁰ And a conviction will not be set aside on appeal because the evidence of insanity was affirmative, while that of sanity was negative.¹⁵¹ The defendant's own testimony, however, that he did not know his act was wrong

¹³⁹ *Brown v. Com.* 14 Bush, 398; *Sharp v. State*, 161 Ind. 288, 68 N. E. 286; *State v. Scott*, 49 La. Ann. 253, 21 So. 271, 10 Am. Crim. Rep. 585, 36 L.R.A. 721.

¹⁴⁰ *Williams v. State*, 50 Ark. 511, 9 S. W. 5; *Jamison v. People*, supra; *State v. Dreher*, 137 Mo. 11, 38 S. W. 567; *Boren v. State*, 32 Tex. Crim. Rep. 637, 25 S. W. 775.

¹⁴¹ *People v. Kloas*, 115 Cal. 567, 47 Pac. 459; *Sanders v. State*, 94 Ind. 147; *People v. De Graff*, 1 Wheeler, C. C. 203; *State v. Barry*, 11 N. D. 428, 92 N. W. 809.

¹⁴² *Cunningham v. State*, 56 Miss. 269, 31 Am. Rep. 360; *R. v. Richards*, 1 Fost. & F. 87.

¹⁴³ *Bowler's Case*, 1 Collinson, Lunacy, 673; *Grubb v. State*, 117 Ind. 277, 20 N. E. 257, 725.

¹⁴⁴ *R. v. Richards*, supra.

¹⁴⁵ *State v. Hundley*, 46 Mo. 414.

¹⁴⁶ *Parsons v. State*, 81 Ala. 577, 60 Am. Rep. 193, 2 So. 854, 7 Am. Crim. Rep. 266; *State v. Jones*, supra.

¹⁴⁷ *People v. Walter*, 1 Idaho, 386; *People v. Webster*, supra.

¹⁴⁸ *State v. Wright*, 134 Mo. 404, 35 S. W. 1145.

¹⁴⁹ *People v. Tripler*, 1 Wheeler, C. C. 48.

¹⁵⁰ *R. v. Pearce*, 9 Car. & P. 667; *State v. Reidell*, 9 Houst. (Del.) 470, 14 Atl. 550.

¹⁵¹ *Rinkard v. State*, 157 Ind. 534, 62 N. E. 14.

¹³¹ See *State v. Pike*, 49 N. H. 399, 6 Am. Rep. 533; *State v. Jones*, 50 N. H. 369, 9 Am. Rep. 242; *Stevens v. State*, 31 Ind. 485, 99 Am. Dec. 634.

¹³² *People v. Webster*, 59 Hun, 398, 13 N. Y. Supp. 414; *State v. Jones*, supra.

¹³³ *People v. Waltz*, 50 How. Pr. 204; *People v. Holmes*, 111 Mich. 364, 69 N. W. 501.

¹³⁴ *Burton v. State*, 33 Tex. Crim. Rep. 138, 25 S. W. 782.

¹³⁵ *Jamison v. People*, 145 Ill. 357, 34 N. E. 486; *Plake v. State*, 121 Ind. 433, 16 Am. St. Rep. 408, 23 N. E. 273; *State v. Geier*, 111 Iowa, 706, 83 N. W. 718; *State v. Holme*, 54 Mo. 153; *State v. Pike*, supra; *People v. Pine*, 2 Barb. 566; *State v. Stark*, 1 Strobb. L. 479; *Clark v. State*, 8 Tex. App. 350.

¹³⁶ *People v. Pine*, supra; *Aszman v. State*, 123 Ind. 347, 24 N. E. 123, 8 L.R.A. 33; *State v. Geier* and *People v. Holmes*, supra.

¹³⁷ *State v. Holme*, supra.

¹³⁸ *United States v. King*, 34 Fed. 302; *Dejarrette v. Com.* 75 Va. 867.

or criminal, is not sufficient to establish idiocy or lunacy,¹⁵³ especially where he testifies to a state of facts inconsistent with such conclusion.¹⁵³ It is the province of the jury to weigh and consider the evidence of insanity in all its bearings.¹⁵⁴

Evidence tending to prove that the accused in a criminal prosecution was insane at some period, either before or after the commission of the criminal act, is to be considered and weighed in connection with the acts of the party tending to establish the fact of insanity;¹⁵⁵ but proof of independent acts or circumstances subsequent to the commission of the crime is not alone sufficient to establish insanity at the time of its commission.¹⁵⁶ And a reversal on the ground of the exclusion of evidence of subsequent acts is not warranted unless it appears that they had some special significance, indicating mental disease.¹⁵⁷ And a new trial will not be ordered on the ground that the verdict was against the evidence where there was little, if any, testimony tending to show insanity up to the time of the offense, upon evidence as to the conduct of the accused after confinement, it appearing by the testimony of intimate acquaintances that he was a person of ordinary intelligence.¹⁵⁸ And the court cannot act upon evidence furnished by the present condition of the defendant on an appeal from a judgment of conviction, and upon that ground reverse a judgment otherwise legal, where his insanity has increased and developed since the trial.¹⁵⁹ Likewise, sanity shortly before and shortly after the act in question is strong evidence of sanity at the time it was committed, which can only be rebutted by showing frenzy or madness at the very time of the act, with reference to it.¹⁶⁰ And a minute recollection on the part of the accused of all the circumstances and details of the act a long time afterwards is strong evidence of his sanity at the time.¹⁶¹

So, the atrocious or terrible nature of the crime, or its enormity, is not evidence of the insanity of the perpetrator;¹⁶² nor is the fact that the act was committed with barbarity;¹⁶³ or that the act was of an unnatural character.¹⁶⁴ And insanity cannot be inferred in

a prosecution for crime merely from the oddness of the deed, or the daring manner in which it was committed.¹⁶⁵ The enormity of the crime, however, may be considered with other evidence in determining whether or not the accused was sane.¹⁶⁶ And while the homicide or other criminal act cannot be regarded as proof in itself of insanity, it is proper to examine it with all its attendant circumstances to determine whether it is most consistent with real or feigned insanity.¹⁶⁷

Likewise, the mere fact that no motive for the homicide appears is not in itself sufficient to establish the insanity of the perpetrator.¹⁶⁸ And the same rule applies to the fact that there was little or no provocation.¹⁶⁹ But the presence or absence of a motive is a proper subject for consideration upon the question whether or not the accused was sane.¹⁷⁰ And motives for the crime, clearly shown, are strong evidence of sanity.¹⁷¹

The fact that a person is unable to discriminate between right and wrong so as to be criminally responsible is best ascertained by the acts and conduct of the individual himself;¹⁷² and they are usually of more value than the opinions of witnesses, however learned or experienced they may be.¹⁷³ Acts, declarations, and conduct evidencing an aberration of mind may be sufficient to establish irresponsibility.¹⁷⁴ And any change in one's acts and conduct, and its extent and cause, and all other such circumstances, exhibited at or about the date of the crime, and previous thereto, are to be considered, and are entitled to more or less weight, according to their nature and their proximity to the act in question;¹⁷⁵ and a man's general habits constitute better evidence than particular acts.¹⁷⁶ The concealment of the crime and an endeavor to escape tend to show a knowledge of the nature of the offense, and ability to discriminate between right and wrong.¹⁷⁷ And evidence of preparation for the crime, and its commission pursuant to such preparation, shows criminal responsibility.¹⁷⁸ Likewise, the conduct of the

¹⁵³ State v. Kluseman, 53 Minn. 541, 55 N. W. 741; Perry v. State, 87 Ala. 30, 6 So. 425.

¹⁵⁴ Perry v. State, supra.

¹⁵⁵ People v. Burgess, 153 N. Y. 561, 47 N. E. 889.

¹⁵⁶ Murphy v. Com. 92 Ky. 485, 18 S. W. 163; People v. Clendennin, 91 Cal. 35, 27 Pac. 418; Armstrong v. State, 30 Fla. 170, 11 So. 618, 17 L.R.A. 484; Flanagan v. State, 103 Ga. 619, 30 S. E. 550, 11 Am. Crim. Rep. 525; R. v. Southey, 4 Foet. & F. 864.

¹⁵⁷ Murphy v. Com. supra.

¹⁵⁸ State v. Lewis, 20 Nev. 333, 22 Pac. 241, 8 Am. Crim. Rep. 574.

¹⁵⁹ Phelps v. Com. 17 Ky. L. Rep. 706, 32 S. W. 470.

¹⁶⁰ People v. Schmitt, 106 Cal. 48, 39 Pac. 204. 160 Com. v. Wireback, 190 Pa. 138, 70 Am. St. Rep. 625, 43 Atl. 542.

¹⁶¹ Pienovi's Case, 3 N. Y. City Hall Rec. 123; Ferrers's Case, 19 How. St. Tr. 947.

¹⁶² Com. v. Buccieri, 153 Pa. 536, 26 Atl. 228; Singleton v. State, 71 Miss. 782, 42 Am. St. Rep. 488, 16 So. 295; State v. Coleman, 20 S. C. 441.

¹⁶³ State v. Stark, 1 Strobh. L. 479; United States v. Lee, 4 Mackey, 489, 54 Am. Rep. 293.

¹⁶⁴ Ball's Case, 2 N. Y. City Hall Rec. 85; La-ros v. Com. 84 Pa. 200.

¹⁶⁵ Com. v. Farkin, 2 Clark (Pa.) 208.

¹⁶⁶ Com. v. Buccieri, 153 Pa. 535, 26 Atl. 228.

¹⁶⁷ People v. Lake, 2 Park. Crim. Rep. 215; Beasley v. State, 50 Ala. 149, 20 Am. Rep. 292; Binyon v. United States, 4 Ind. Terr. 642, 76 S. W. 265.

¹⁶⁸ Com. v. Mosler, 4 Pa. 264; Carter v. State, 12 Tex. 500, 62 Am. Dec. 539; R. v. Dixon, 11 Cox, C. C. 341.

¹⁶⁹ State v. Schaefer, 116 Mo. 96, 22 S. W. 447.

¹⁷⁰ Com. v. Buccieri, supra; People v. Barber, 115 N. Y. 475, 22 N. E. 182; Keffer v. State, 12 Wyo. 49, 73 Pac. 556.

¹⁷¹ Shaw v. State, 32 Tex. Crim. Rep. 155, 22 S. W. 588.

¹⁷² United States v. Shults, 6 McLean, 121, Fed. Cas. No. 16,286.

¹⁷³ State v. Thomas, Houst. Crim. Rep. (Del.) 511.

¹⁷⁴ State v. Brinyea, 5 Ala. 241.

¹⁷⁵ Cole's Trial, 7 Abb. Pr. N. S. 321; Massengale v. State, 24 Tex. App. 181, 5 S. W. 650, 6 S. W. 35.

¹⁷⁶ Snook v. Watts, 11 Beav. 105; State v. Dreher, 137 Mo. 11, 38 S. W. 567.

¹⁷⁷ United States v. Shults, supra; Lee v. State, 116 Ga. 563, 42 S. E. 759.

¹⁷⁸ State v. O'Neil, 51 Kan. 651, 33 Pac. 287, 24 L.R.A. 555; Lee v. State, 116 Ga. 563, 42 S. E. 759.

family of the person committing a crime may be considered on the question of his sanity, and evidence that he had previously been totally deranged, and that they had treated him as an insane person, is of considerable weight on the question of his insanity.¹⁷⁹ So, an attempt to commit suicide is not of itself evidence of insanity, but is to be considered together with the other acts and circumstances bearing on the question.¹⁸⁰ But mere eccentricity does not show insanity which will operate as an excuse for crime.¹⁸¹ And an irritable temper and excitable disposition do not show insanity which will confer irresponsibility;¹⁸² nor do suspicions of danger and apparent melancholy and peculiar deportment generally.¹⁸³ And a mere hallucination is not of itself evidence of insanity, though the inability to correct it may be.¹⁸⁴ And proof that the accused was illiterate, ignorant, and passionate does not justify an instruction as to insanity, and the admission of evidence of weak-mindedness;¹⁸⁵ nor does the fact that a person was deaf and dumb from infancy raise a presumption of idiocy.¹⁸⁶ And the fact that a person was a fit subject for treatment in an insane hospital, though evidence, is not conclusive of criminal irresponsibility.¹⁸⁷

So, the mere fact that a cause existed which might produce insanity is not sufficient to establish criminal irresponsibility;¹⁸⁸ though it is sufficient to go to the jury with a definition of insanity in its legal sense.¹⁸⁹ And evidence that the accused was an epileptic, and that the tendency of that disease is to weaken the intellect and sometimes produce total insanity, is not sufficient to establish irresponsibility, where it failed to show that it had impaired his intellect to any serious extent.¹⁹⁰ But an instruction that the fact that the accused had been subject to epilepsy, and that epilepsy tends to produce insanity, is not sufficient to raise a reasonable doubt of his sanity, is erroneous, as tending to mislead and to interfere with the province of the jury to weigh the evidence.¹⁹¹ And a defense may be made out upon evidence that the accused was suffering from an attack of epilepsy at the time, which rendered him unconscious, and capable of act-

ing only automatically, without any design or purpose of committing the act.¹⁹²

Nor is proof of hereditary insanity, or of a taint of insanity in the ancestors or family of a man, sufficient to relieve him from criminal responsibility, in the absence of actual insanity in himself.¹⁹³ But where there is evidence directly tending to prove insanity on the part of the accused, proof of hereditary insanity is admissible in corroboration thereof,¹⁹⁴ and as an additional link in the chain of circumstances.¹⁹⁵ But it is a mere circumstance, and before any inference can be drawn from it, the fact of insanity of the ancestors must be clearly established.¹⁹⁶

Conclusion.

In conclusion it may be said that, under existing systems of practice of criminal law, though the accused may be proved beyond a reasonable doubt to have done the killing or other act charged, and though it may appear to have been premeditated and with malice aforethought, still, if insanity incapacitating him from entertaining the criminal intent involved in the crime is proved, an element of the crime is lacking, and the verdict must be "not guilty." And while means are usually provided for confinement in asylums of persons found "not guilty because insane," we are not without demonstrative proof that frequently the guilty escape, and persons thus confined are able almost to monopolize the time of the courts in their efforts to escape, at a large cost to the state. This would be corrected under the suggested enactment. The man found "guilty, but insane," would be sentenced and confined, and would have to deal with the governor to get out, just as he would if he had been found "guilty" without the "but insane."

It would seem that this proposed enactment would be also of marked effect in the way of doing away with sham pleas of insanity. There would be no particular incentive to plead insanity if the culprit knew that he would be confined just as long, that his facilities for escape would be no greater, and that he would be a convicted felon in the one case as well as the other. And if a man shammed insanity, and procured a verdict of "guilty, but insane," confinement with lunatics for the whole term would not be undeserved punishment under the circumstances, and if he were really insane when the crime was committed, and afterwards recovered, the same official responsibility would rest on the governor as now rests upon him with reference to pardons; and we are authorized to expect that any governor so called upon to act will secure expert assistance in which he has confidence, and arrive at a correct conclusion.

¹⁷⁹ *People v. Barberi*, 12 N. Y. Crim. Rep. 89, 47 N. Y. Supp. 168.

¹⁸⁰ *Cole's Trial*, supra; *Bradley v. State*, 31 Ind. 492; *State v. Cunningham*, 72 N. C. 469; *State v. Kalb*, 2 Ohio Leg. News, 364; *Guiteau's Case*, 10 Fed. 161.

¹⁸¹ *State v. Cunningham*, 72 N. C. 469; *Com. v. Lutz*, 10 Kulp, 234; *Guiteau's Case*, supra; *R. v. Vyse*, 3 Fost. & F. 247.

¹⁸² *State v. Cunningham*, supra.

¹⁸³ *People v. Pine*, 2 Barb. 566; *State v. Hockett*, 70 Iowa, 442, 30 N. W. 742.

¹⁷⁹ *Kinlock's Case*, 25 How. St. Tr. 891, 997.

¹⁸⁰ *Coyle v. Com.* 100 Pa. 573, 45 Am. Rep. 397; *People v. Owens*, 123 Cal. 482, 56 Pac. 251.

¹⁸¹ *United States v. Young*, 25 Fed. 710; *Com. v. Meredith*, 17 Phila. 90.

¹⁸² *Sindram v. People*, 1 N. Y. Crim. Rep. 448; *Com. v. Cleary*, 148 Pa. 26, 23 Atl. 1110; *Hoover v. State*, 161 Ind. 348, 68 N. E. 591.

¹⁸³ *State v. Shippey*, 10 Minn. 223, Gil. 178, 88 Am. Dec. 70.

¹⁸⁴ *Com. v. Meredith*, supra.

¹⁸⁵ *Fitzpatrick v. Com.* 81 Ky. 357.

¹⁸⁶ *State v. Howard*, 118 Mo. 127, 24 S. W. 41.

¹⁸⁷ *Plueger v. State*, 46 Neb. 493, 64 N. W. 1094; *Meyer v. People*, 156 Ill. 126, 40 N. E. 490; *Goodwin v. State*, 96 Ind. 550.

¹⁸⁸ *Sawyer v. State*, 35 Ind. 80; *State v. Gravitte*, 22 La. Ann. 587; *McAllister v. Territory*, 1 Wash. Terr. 360; *Taylor v. United States*, 7 App. D. C. 27.

¹⁸⁹ *R. v. Law*, 2 Fost. & F. 836.

¹⁹⁰ *Com. v. Bucciari*, supra; *State v. Hayes*, 16 Mo. App. 560; *People v. Burgess*, 153 N. Y. 561, 47 N. E. 889; *Lovengrove v. State*, 31 Tex. Crim. Rep. 491, 21 S. W. 191.

¹⁹¹ *Guetteg v. State*, 63 Ind. 278, 3 Am. Crim. Rep. 233.

Cross-Examination of the Perjured Witness

BY FRANCIS L. WELLMAN

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DIFFICULT but extremely effective method of exposing a certain kind of perjurer is to lead him gradually to a point in his story, where—in his answer to the final question "Which?"—he will have to choose either one or the other of the only two explanations left to him, either of which would degrade if not entirely discredit him in the eyes of the jury.

The writer once heard the Honorable Joseph H. Choate make very telling use of this method of examination. A stockbroker was being sued by a married woman for the return of certain bonds and securities in the broker's possession, which she alleged belonged to her. Her husband took the witness stand and swore that he had deposited the securities with the stockbroker as collateral against his market speculations, but that they did not belong to him, and that he was acting for himself, and not as agent for his wife, and had taken her securities unknown to her.

It was the contention of Mr. Choate that, even if the bonds belonged to the wife, she had either consented to her husband's use of the bonds, or else was a partner with him in the transaction. Both of these contentions were denied under oath by the husband.

"Mr. Choate. When you ventured into the realm of speculations in Wall street, I presume you contemplated the possibility of the market going against you, did you not?

"Witness. Well, no, Mr. Choate, I went into Wall street to make money, not to lose it.

"Mr. Choate. Quite so, sir; but you will admit, will you not, that sometimes the stock market goes contrary to expectations?

"Witness. Oh, yes, I suppose it does.

"Mr. Choate. You say the bonds were not your own property, but your wife's?

"Witness. Yes, sir.

"Mr. Choate. And you say that she did not lend them to you for purposes of speculation, or even know you had possession of them?

"Witness. Yes, sir.

"Mr. Choate. You even admit that when you deposited the bonds with your broker as collateral against your stock speculation, you did not acquaint him with the fact that they were not your own property?

"Witness. I did not mention whose property they were, sir.

"Mr. Choate (in his inimitable style). Well, sir, in the event of the market going against you and your collateral being sold to meet your losses, *whom did you intend to cheat, your broker or your wife?*"

The witness could give no satisfactory answer, and for once a New York jury was found who was willing to give a verdict against the customer and in favor of a Wall street broker.

In the great majority of cases, however, the most skilful efforts of the cross-examiner will fail to lead the witness into such "traps" as these. If you have accomplished one such *coup*, be content

with the point you have made; do not try to make another with the same witness; sit down and let the witness leave the stand.

But let us suppose you are examining a witness with whom no such climax is possible. Here you will require infinite patience and industry. Try to show that his story is inconsistent with itself, or with other known facts in the case, or with the ordinary experience of mankind. There is a wonderful power in persistence. If you fail in one quarter, abandon it and try something else. There is surely a weak spot somewhere, if the story is perjured. Frame your questions skilfully. Ask them as if you wanted a certain answer, when in reality you desire just the opposite one. "Hold your own temper while you lead the witness to lose his" is a Golden Rule on all such occasions. If you allow the witness a chance to give his reasons or explanations, you may be sure they will be damaging to you, not to him. If you can succeed in tiring out the witness or driving him to the point of sullenness, you have produced the effect of lying.

But it is not intended to advocate the practice of lengthy cross-examinations, because the effect of them, unless the witness is broken down, is to lead the jury to exaggerate the importance of evidence given by a witness who requires so much cross-examination in the attempt to upset him. "During the Tichborne trial for perjury, a remarkable man named Luie was called to testify. He was a shrewd witness, and told his tale with wonderful precision and apparent accuracy. That it was untrue there could hardly be a question, but that it could be proved untrue was extremely doubtful and an almost hopeless task. It was an improbable story, but still was not an absolutely impossible one. If true, however, the claimant was the veritable Roger Tichborne, or at least the probabilities would be so immensely in favor of that supposition that no jury would agree in finding that he was Arthur Orton. His manner of giving his evidence was perfect. After the trial one of the jurors was asked what he thought of Luie's evidence, and if he

ever attached any importance to his story. He replied that at the close of the evidence in chief he thought it so improbable that no credence could be given to it. But after Mr. Hawkins had been at him for a day, and could not shake him, I began to think, if such a cross-examiner as that cannot touch him, there must be something in what he says, and I began to waver. I could not understand how it was that, if it was all lies, it did not break down under such able counsel."

The presiding judge, whose slightest word is weightier than the eloquence of counsel, will often interrupt an aimless and prolonged cross-examination with an abrupt, "Mr. —, I think we are wasting time," or, "I shall not allow you to pursue that subject further," or, "I cannot see the object of this examination." This is a setback from which only the most experienced advocate can readily recover. Before the judge spoke, the jury, perhaps, were already a little tired and inattentive and anxious to finish the case; they were just in the mood to agree with the remark of his Honor, and the "atmosphere of the case," as I have always termed it, was fast becoming unfavorable to the delinquent attorney's client. How important a part in the final outcome of every trial this atmosphere of the case usually plays! Many jurymen lose sight of the parties to the litigation—our clients—in their absorption over the conflict of wits going on between their respective lawyers.

It is in criminal prosecutions where local politics are involved, that the jury system is perhaps put to its severest test. The ordinary jurymen is so apt to be blinded by his political prejudices that where the guilt or innocence of the prisoner at the bar turns upon the question as to whether the prisoner did or did not perform some act, involving a supposed advantage to his political party, the jury is apt to be divided upon political lines.

About ten years ago, when a wave of political reform was sweeping over New York city, the Good Government clubs caused the arrest of about fifty inspectors of election for violations of the election laws. These men were all brought up for trial in the supreme court, criminal term, before Mr. Justice Barrett. The

prisoners were to be defended by various leading trial lawyers, and everything depended upon the result of the first few cases tried. If these trials resulted in acquittals, it was anticipated that there would be acquittals all along the line; if the first offenders put on trial were convicted and sentenced to severe terms in prison, the great majority of the others would plead guilty, and few would escape.

At that time the county of New York was divided, for purposes of voting, into 1,067 election districts, and on an average 250 votes were cast in each district. An inspector of one of the election districts was the first man called for trial. The charge against him was the failure to record correctly the vote cast in his district for the Republican candidate for alderman. In this particular election district there had been 167 ballots cast, and it was the duty of the inspectors to count them and return the result of their count to police headquarters.

At the trial twelve respectable citizens took the witness chair, one after another, and affirmed that they lived in the prisoner's election district, and had all cast their ballots on election day for the Republican candidate. The official count for that district, signed by the prisoner, was then put in evidence, which read: Democratic votes, 167; Republican, 0. There were a number of witnesses called by the defense who were Democrats. The case began to take on a political aspect, which was likely to result in a divided jury and no conviction, since it had been shown that the prisoner had a most excellent reputation and had never been suspected of wrongdoing before. Finally, the prisoner himself was sworn in his own behalf.

It was the attempt of the cross-examiner to leave the witness in such a position before the jury that no matter what their politics might be, they could not avoid convicting him.

There were but five questions asked.

Counsel. You have told us, sir, that you have a wife and seven children depending upon you for support. I presume your desire is not to be obliged to leave them; is it not?

Prisoner. Most assuredly, sir.

Counsel. Apart from that consideration, I presume you have no particular desire to spend a term of years in Sing Sing prison?

Prisoner. Certainly not, sir.

Counsel. Well, you have heard twelve respectable citizens take the witness stand and swear they voted the Republican ticket in your district, have you not?

Prisoner. Yes, sir.

Counsel (pointing to the jury). And you see these twelve respectable gentlemen sitting here ready to pass judgment upon the question of your liberty, do you not?

Prisoner. I do, sir.

Counsel (impressively, but quietly). Well, now, Mr.—, you will please explain to these twelve gentlemen (pointing to jury) how it was that the ballots cast by the other twelve gentlemen were not counted by you, and then you can take your hat and walk right out of the court room a free man.

The witness hesitated, cast down his eyes, but made no answer, and counsel sat down.

Of course a conviction followed. The prisoner was sentenced to five years in state prison. During the following few days nearly thirty defendants, indicted for similar offenses, pleaded guilty, and the entire work of the court was completed within a few weeks. There was not a single acquittal or disagreement.

Occasionally, when sufficient knowledge of facts about the witness or about the details of his direct testimony can be correctly anticipated, a trap may be set into which even a clever witness, as in the illustration that follows, will be likely to fall.

During the lifetime of Dr. A. E. Ranney there were few physicians in this country who were so frequently seen on the witness stand, especially in damage suits. So expert a witness had he become that Chief Justice Van Brunt, many years ago, is said to have remarked, "Any lawyer who attempts to cross-examine Dr. Ranney is a fool." A case occurred a few years before Dr. Ranney died, however, where a failure to cross-examine would have been tantamount to a confession of judgment, and the trial lawyer having the case in charge,

though fully aware of the dangers, was left no alternative, and as so often happens where "fools rush in," made one of those lucky "bull's eyes" that is perhaps worth recording.

It was a damage case brought against the city by a lady who, on her way from church one spring morning, had tripped over an obscure encumbrance in the street, and had, in consequence, been practically bedridden for the three years leading up to the day of trial. She was brought into the court room in a chair, and was placed in front of the jury, a pallid, pitiable object, surrounded by her women friends, who acted upon this occasion as nurses, constantly bathing her hands and face with ill-smelling ointments, and administering restoratives, with marked effect upon the jury.

Her counsel, Ex-Chief Justice Noah Davis, claimed that her spine had been permanently injured, and asked the jury for \$50,000 damages.

It appeared that Dr. Ranney had been in constant attendance upon the patient ever since the day of her accident. He testified that he had visited her some three hundred times, and had examined her minutely at least two hundred times in order to make up his mind as to the absolutely correct diagnosis of her case, which he was now thoroughly satisfied was one of genuine disease of the spinal marrow itself. Judge Davis asked him a few preliminary questions, and then gave the doctor his head and let him "turn to the jury and tell them all about it." Dr. Ranney spoke uninterruptedly for nearly three quarters of an hour. He described in detail the sufferings of his patient since she had been under his care, his efforts to relieve her pain, the hopeless nature of her malady. He then proceeded in a most impressive way to picture to the jury the gradual and relentless progress of the disease as it assumed the form of creeping paralysis, involving the destruction of one organ after another until death became a blessed relief. At the close of this recital, without a question more, Judge Davis said in a calm but triumphant tone, "Do you wish to cross-examine?"

Now the point in dispute—there was

no defense on the merits—was the nature of the patient's malady. The city's medical witnesses were unanimous that the lady had not, and could not have, contracted spinal disease from the slight injury she had received. They styled her complaint as "hysterical," existing in the patient's mind alone, and not indicating nor involving a single diseased organ; but the jury evidently all believed Dr. Ranney, and were anxious to render a verdict on his testimony. He must be cross-examined. Absolute failure could be no worse than silence, though it was evident that, along expected lines, questions relating to his direct evidence would be worse than useless. Counsel was well aware of the doctor's reputed fertility of resource, and quickly decided upon his tactics.

The cross-examiner first directed his questions toward developing before the jury the fact that the witness had been the medical expert for the New York, New Haven, and Hartford Railroad thirty-five years, for the New York Central Railroad, forty years, for the New York & Harlem River Railroad twenty years, for the Erie Railroad fifteen years, and so on until the doctor was forced to admit that he was so much in court as a witness in defense of these various railroads, and was so occupied with their affairs, that he had but comparatively little time to devote to his reading and private practice.

Counsel (perfectly quietly). Are you able to give us, Doctor, the name of any medical authority that agrees with you when you say that the particular group of symptoms existing in this case points to one disease and one only?

Doctor. "Oh, yes, Dr. Erskine agrees with me."

Counsel. Who is Dr. Erskine, if you please?

Doctor (with a patronizing smile). Well, Mr. —, Erskine was probably one of the most famous surgeons that England has ever produced. (There was a titter in the audience at the expense of counsel.)

Counsel. What book has he written?

Doctor (still smiling). He has written a book called "Erskine on the Spine," which is altogether the best-known work on the subject. (The titter among the audience grew louder.)

Counsel. When was this book published?

Doctor. About ten years ago.

Counsel. Well, how is it that a man whose time is so much occupied as you have told us yours is has leisure enough to look up medical authorities to see if they agree with him?

Doctor (fairly beaming on counsel). Well, Mr. —, to tell you the truth, I have often heard of you, and I half suspected you would ask me some such foolish question; so this morning after my breakfast, and before starting for court, I took down from my library my copy of Erskine's book, and found that he agreed entirely with my diagnosis in this case. (Loud laughter at expense of counsel, in which the jury joined.)

Counsel (reaching under the counsel table and taking up his own copy of "Erskine on the Spine," and walking deliberately up to the witness). Won't you be good enough to point out to me where Erskine adopts your view of this case?

Doctor (embarrassed). Oh, I can't do it now; it is a very thick book.

Counsel (still holding out the book to the witness). But you forget, Doctor, that thinking I might ask you some such foolish question, you examined your volume of Erskine this very morning after breakfast and before coming to court.

Doctor (becoming more embarrassed and still refusing to take the book). I have not time to do it now.

Counsel. *Time!* why there is all the time in the world.

Doctor (No answer).

Counsel and witness eye each other closely.

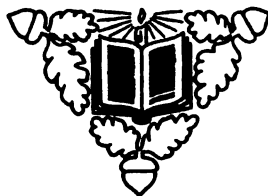
Counsel (sitting down, still eying witness). I am sure the court will allow me to suspend my examination until you shall have had time to turn to the place you read this morning in that book, and can reread it now aloud to the jury.

Doctor (No answer).

The court room was in deathly silence for fully three minutes. The witness *wouldn't* say anything, counsel for plaintiff *didn't dare* to say anything, and counsel for the city *didn't want* to say anything; he saw that he had caught the witness in a manifest falsehood, and that the doctor's whole testimony was discredited with the jury unless he could open to the paragraph referred to which counsel well knew did not exist in the whole work of Erskine.

At the expiration of a few minutes, Mr. Justice Barrett, who was presiding at the trial, turned quietly to the witness and asked him if he desired to answer the question, and upon his replying that he did not intend to answer it any further than he had already done, he was excused from the witness stand amid almost breathless silence in the court room. As he passed from the witness chair to his seat, he stopped and whispered into the ear of counsel, "You are the —est most impertinent man I have ever met."

After a ten days' trial the jury were unable to forget the collapse of the plaintiff's principal witness, and failed to agree upon a verdict.



Editorial Comment

A brief review of current topics



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Edited by Asa W. Russell.

Waste

THE conservation of our national resources is a growing demand of the times. We have been prodigally wasteful of nature's bounties,—wasteful in consumption, wasteful in management, and wasteful of ourselves.

The constant trend toward the centers of population has drawn from the agricultural districts its most virile stock to seek success, and generally to find oblivion in the maelstrom of our great cities. Scientific cultivation of the soil has been neglected, lands have been impoverished and wasted, and no provision made to assure an adequate food supply at reasonable prices.

Our public service corporations which minister to the indispensable wants of the community have, through competition and mismanagement, wasted millions of dollars, and too often furnished inferior service at exorbitant prices.

The high-gearred machine of twentieth century civilization has made such tremendous drafts upon the nervous energy of men and women that we have developed among us weaknesses and diseases virtually unknown to our fathers. We are not only prodigal in this respect, as regards the present, but we mortgage the future of the race by sending children to toil in mill and shop. Insanity is said to have increased 100 per cent in fifty years, while drugs and drunkenness still scourge humanity like a pestilence. If this spendthrift policy continues we shall invite national disaster. Improved tillage, prudent husbandry of the national domain and resources, control of corporations, uniform excise and labor laws, and a more just distribution of the fruits of industry are subjects that may well engage the attention of our lawmakers, Federal and state.

Portrayal of Thought

¶ It is claimed that it will soon be possible to watch the processes of thought on the moving picture screen. By new apparatus, which is being perfected, the man of science will be able to suggest an idea to his patient, and then observe the infinitesimal changes of the brain tissues which result upon thinking.

Dr. Max Baff, fellow of psychology at Clark University, in Worcester, makes known that a device now in preparation, by which the tiny brain cells may be magnified 500 times, will make thought actually visible to the eye. Light will be thrown on the problems of crime by this new achievement, he believes. A man's mental power may be measured to a nicety, and the mystery of the two great extremes in the mental scale, the brain of

the genius and the brain of the fool, will be solved.

"It is as if a new continent had been discovered," he says. "The exact place in the brain area where thought takes place is not yet known. By the moving pictures the riddle will be solved, I believe. Once we study the movement of the brain cells magnified 500 times, we will be able to gauge the capacity of a man's mind, and whether or not he is fitted for the work he is doing. By these means science will be able to discriminate between the fit and the unfit. We shall discover the criminal who commits the crime because he cannot help it, and on the other hand we shall be able to detect the criminal who is feigning insanity, for brain storms, in that they are a definite mental phenomenon, may be photographed."

Time and Chance

"**T**IME and chance happeneth to them all." This is broadly true of our laws and courts. Our jurisprudence is not a fixed quantity, and the decisions of our tribunals are sometimes altered by unforeseen contingencies. A change in the personnel of the court has more than once been responsible for a change in the tenor of its decisions.

"The judgment now about to be given," said Justice Jeremiah Black on a certain occasion, "is one of 'death's doings.' No one can doubt that if Judge Gibson and Judge Coulter had lived, the plaintiff could not have been thus deprived of his property. . . . It is a melancholy reflection that the property of a citizen should be held by a tenure so frail. But 'new lords, new laws,' is the order of the day. Hereafter, if any man be offered a title which the Supreme Court has decided to be good, let him not buy it if the judges who made the decision are dead; if they are living let him get an insurance on their lives, for 'ye know not what a day or an hour may bring forth.'"

"The majority of this court," continued Judge Black, "changes once every nine years, without counting the chances of death and resignation. If each new

set of judges shall consider themselves at liberty to overthrow the doctrines of their predecessors our system of jurisprudence (if system it can be called) would be the most fickle, uncertain, and vicious that the civilized world ever saw. A French Constitution, or a South American Republic, or a Mexican Administration, would be an immortal thing in comparison to the short-lived principles of Pennsylvania law."

It is a happy judicial faculty to know when resolutely to walk the ancient ways, and when the traditions of the past must be modified in their application to new conditions.

The theory which has applied always to the common law is that law ought to be mobile, and, to a certain extent, fluctuating. It ought to be pre-eminently, in a democracy, a progressive science. The essential rights of person and property are always the same, but the measures for the protection of those rights are not always the same.

We live in a new world,—one which is yet in a state of transition. The people demand measures for the cure of economic conditions which exist. They are taking unto themselves greater political power than they have ever before dreamt of exercising. They are bent upon establishing a better and stronger democracy.

The courts are playing, and will continue to play, a most important part in this movement. The process of reorganization which is now going on will bring before the courts many new questions, many important problems. It is for those who interpret the law to be broad as well as learned, wise as well as honest.

James Russell Lowell voiced good law as well as good verse when he penned the prophetic lines:

The world advances and in time outgrows
The laws that in our father's day were best;
And, doubtless, after us some purer scheme
Will be shaped out by wiser men than we,
Made wiser by the steady growth of truth.
. . . . I have no dread of what
Is called for by the instinct of mankind.
Nor think I that God's world would fall apart
Because we tear a parchment more or less.
Truth is eternal, but her effluence,
With endless change, is fitted to the hour;
Her mirror is turned forward, to reflect
The promise of the future, not the past.

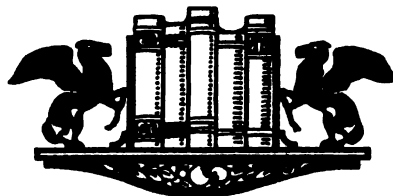
The Spreading Referendum

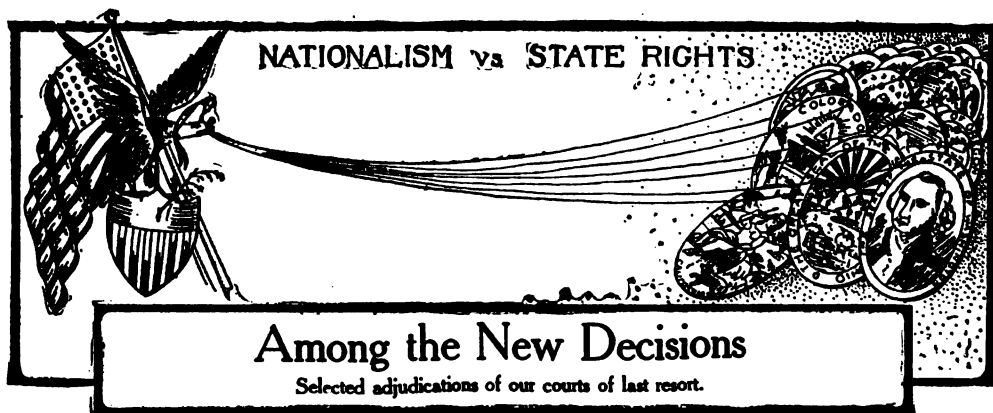
Aside from Switzerland, writes Mr. Frederick Austin Ogg, in the Boston Evening Transcript, the United States is the only nation in which the twin principles of initiative and referendum have thus far been carried into practice on any considerable scale.

Beginning with South Dakota, in 1898, nine of our states have thus far established the legislative initiative and referendum in one or another form. In Utah the measure was proposed in 1899, and voted by the people in 1900, though for the lack of the necessary supplementary legislation it has not yet been put in operation. In Oregon the necessary proposals were made in 1899 and 1901, the adoption took place in 1902, and the validity of the system was affirmed in a supreme court decision of 1903. In Nevada the principles were ratified at the general election of 1904, though here again, by reason of constitutional technicalities, they are still inoperative. In Missouri similar proposals were made in 1903, resubmitted (after having been voted down) in 1907, and adopted in 1908. In Montana an initiative and referendum amendment was proposed in 1905, adopted in 1906, and given the necessary supplementary legislation in 1907. Delaware, is unique in being the only one of the states in which the people have never had an opportunity to vote immediately upon even a constitution or a constitutional amendment. In 1905, however, the legislature submitted to the voters the question as to whether there should be established at the next session a system of advisory initiative and ad-

visory referendum. By a vote of seven to one the proposition was approved, November, 1906, and in 1907 the referendum was for the first time applied in a vote upon the question of whether or not liquor licenses should be granted within the three counties of the state.

At its session of 1907 the legislature of Maine adopted an elaborate proposal for a constitutional amendment providing for direct popular legislation, and at the state election of September, 1908, the amendment was ratified by a large majority. July 4, 1908, Oklahoma, entered the Union with a Constitution containing unusually elaborate provisions for the initiative and referendum, this being the first instance in which the system has been embodied in an original Constitution. In North Dakota the question is pending. An amendment was proposed in 1907, but has not yet reached the point of submission to the people, although of its eventual adoption there is very little doubt. Of the two states now entering the Union, one—New Mexico—has not incorporated the initiative-referendum in its Constitution, but the other—Arizona—is practically certain to do so. Illinois has a modified form of the initiative, established in 1901 by a law creating the so-called "public opinion" system, under which 25 per cent of the registered voters of any incorporated town, village, city, township, county, or school district may compel the submission of any local question to popular vote, and 10 per cent of the registered voters of the state may by petition secure the submission of a proposition to the electorate of the entire Commonwealth. Texas has a device of a somewhat similar sort.





Attachment—record information—rights.

—A question not previously presented to the courts for adjudication was considered in *Jennings v. Lentz*, 50 Or. 483, 93 Pac. 327, 29 L.R.A.(N.S.) 584, holding that information by one having the record title to real estate, that he has conveyed it to another, together with a record of a mortgage on the property from the latter to him, is not such evidence that the latter is the owner of the property that one relying upon it in purchasing the property from him would be regarded as a bona fide purchaser; and therefore an attaching creditor of the reputed grantee, who, by statute, has the status of such purchaser, acting upon such information, acquires no right to the property superior to that conferred by a prior unrecorded deed, which such grantee had executed and delivered to a stranger.

Bank—lost check—duplicate—payment.

—The recent South Carolina case of *Southern Seating & C. Co. v. First Nat. Bank*, 68 S. E. 962, holds that where presentation of a check makes the bank liable therefor to the holder, one who, after giving a check, signs an order directing the bank to pay to the holder the amount of such check if it is still unpaid, takes the risk of the subsequent presentation of such check, and the bank may be required to pay both checks if the deposit account has funds.

The decision is logical, inasmuch as the drawer has it in his power to require an indemnity bond; and this position is supported by the few existing authorities upon the question, which are collated in

a note appended to the report of the case in 29 L.R.A.(N.S.) 623.

Bank—knowledge of officer—notice—individual dealing.—The knowledge of an officer of a bank, who is also a member of its discount committee, and who offers to the bank a note which he had secured by fraud, but who withdraws from the committee meeting while the question of the acceptance of the note is under consideration, is held in *Lilly v. Hamilton Bank*, 178 Fed. 53, not imputable to the bank so as to prevent its enforcing the note.

As appears by the note accompanying the report of the case in 29 L.R.A.(N.S.) 558, a well-recognized exception to the general rule that a principal is chargeable with the knowledge acquired by his agent exists where the officers of a bank are personally interested in a transaction to which the bank is also a party in interest. The reason for the exception is that the officer will not be presumed to impart knowledge which is adverse to his own interest. Some cases do not recognize the exception to the general rule on account of the bank officer's interest, where such officer is the sole representative of the bank in the transaction, and the bank is held chargeable with the agent's knowledge, although it is personally interested. Thus, in the North Dakota case of *Emerado Farmers' Elevator Co. v. Farmers' Bank*, 127 N. W. 552, 29 L.R.A.(N.S.) 567, it is decided that in case the cashier of a banking institution who has the entire management, control, and conduct of its affairs, and stands as sole representative of

the bank in all transactions relating to the receipt and disbursement of the funds of depositors, while so acting, draws checks of an elevator company of which he is treasurer, payable to the bank, presents such checks as treasurer to himself as cashier, takes the sum of money paid over thereon, and misappropriates it, the bank for which he is acting will be held to knowledge of his fraudulent purpose at the time of presenting the checks, and cannot base thereon a claim of liability in its favor against the elevator company.

Broker—procuring loan—purchase at judicial sale.—Although there are many decisions on the general question whether an agent may purchase property of his principal at a judicial sale which he was employed to prevent, the case of *Clark v. Delano*, 205 Mass. 224, 91 N. E. 299, 29 L.R.A.(N.S.) 595, holding that the fact that a broker is employed to secure a loan to pay a mortgage does not prevent his becoming purchaser at the foreclosure sale in case he fails to secure the loan, is unique in its facts, and seems to be without any exact precedent.

Carrier—lost freight—act of God—burden of proof.—Whenever a carrier seeks to excuse itself for loss occurring on account of an act of God or some irresistible superhuman cause, it is held in *Chicago, R. I. & P. R. Co. v. Logan, Snow & Co.* 23 Okla. 707, 105 Pac. 343, that the burden of proof rests upon the carrier. This proposition is shown by the note accompanying this case in 29 L.R.A.(N.S.) 663, to state the well-settled rule. The only conflict of authority arises when the question is: Must the carrier relying upon such a defense as an act of God or *vis major* go further, and affirmatively show that there was no negligence or want of due care on its part but for which the goods would not have been injured or destroyed? Upon this question the decisions are conflicting, though the weight of authority seems to support the rule that it is incumbent upon the carrier to show that it used due diligence to carry the goods safely, and that the act of God or the *vis major* was the sole cause of the loss.

Carrier—ejection of passenger from station—liability.—A railroad company is held liable in the Texas case of *Texas M. R. Co. v. Geraldton*, 128 S. W. 611, for injury to a woman who has gone to its depot to take passage on a train, by the act of its agent in turning her out into a storm, with notice that she is in no condition to encounter it, although the reasonable time fixed by the company for closing the building has arrived.

From the note appended to this case in 29 L.R.A.(N.S.) 799, it appears that while there are but few decisions involving this particular question, it would seem that a general rule might be deduced from these cases, to the effect that, if a passenger is detained at the station through any cause for which the railroad company itself is responsible, then the railroad company is liable for any injuries received by reason of the passenger being turned out; but if the person comes to the station merely for his own convenience, at an unreasonable time before the departure of the train, then the company may enforce its rules, and turn the passenger out without incurring liability for damages received in consequence thereof.

Citizenship—naturalization—alien wife.—That an alien wife of an alien, both of whom are residing in this country, is not entitled to naturalization, is held in *United States v. Cohen*, — C. C. A. —, 179 Fed. 834, 29 L.R.A.(N.S.) 829. The question has apparently been considered in but two previous cases, both of which support the position taken in the *Cohen Case*.

Corporation—succeeding partnership—liability for debts.—Where the stockholders of a corporation formed by members of a pre-existing partnership, association, or firm include also third persons, the decisions seem agreed in holding that the corporation, in the absence of fraud or express agreement, cannot be held liable for the partnership debts. Thus, in *Byrne Hammer Dry Goods v. Willis-Dunn Co.* 23 S. D. 221, 121 N. W. 620, annotated in 29 L.R.A.(N.S.) 589, it is held that a corporation which continues the business of an insolvent partnership

is not, in the absence of fraud, liable for its debts, where it is organized by the former partners, who pay for their stock by insurance money collected for the destruction of the partnership assets by fire, and a stranger, who, with knowledge of the facts, contributes cash equal to that of each partner, each contributor taking a *pro rata* share of stock for his contribution.

Disorderly house—official sanction—liability of officer.—A novel question was presented in the Arkansas case of *State v. Lismore*, 126 S. W. 855, annotated in 29 L.R.A.(N.S.) 721, which holds that members of a city council who pass an ordinance providing for the licensing of bawdyhouses do not become participants in the keeping of houses kept under the resolution, so as to render themselves liable to punishment as such keepers.

Divorce—desertion—forcing spouse to leave home.—Whether a spouse who forces the other to leave home thereby deserts the latter, is considered in the Florida case of *Hudson v. Hudson*, 51 So. 857, annotated in 29 L.R.A.(N.S.) 614, in which it is held, in a suit for divorce upon the ground of wilful, obstinate, and continued desertion, for the statutory period, that it is immaterial which of the married parties leaves the marital home, the one who intends bringing the cohabitation to an end commits the desertion; that the party who drives the other away is the "deserter," and that a wife may drive her husband away.

Domicil—distribution of estate—jurisdiction.—The possibility of an American citizen acquiring a domicil of choice in that part of a foreign country over which, by treaty, the United States is permitted to extend its own law so far as the property rights of its citizens are concerned, was considered in *Mather v. Cunningham*, 105 Me. 326, 74 Atl. 809, holding that a domicil of testacy or intestacy may be established by a citizen of one of the United States in that portion of China in which, by treaty, he is permitted to enjoy the laws of the United States, so that in case of his death his estate is subject

to the jurisdiction of the consular court there located, and not to the courts of the state of his former domicil.

Dower—land purchased for railroad gravel pit.—That a railroad does not take land purchased for a gravel pit free from the right of the grantor's wife to dower, although it so far devotes the land to public use as to secure therefrom materials for its roadbed, is held in the Maine case of *McAllister v. Dexter & P. R. Co.* 76 Atl. 891, which is accompanied in 29 L.R.A.(N.S.) 726, by a note setting forth the decisions on right to dower in land purchased by a railroad company.

Druggist—duty—care required.—The ordinary care which a druggist is bound to exercise in the filling of prescriptions is held in the recent Maine case of *Tremblay v. Kimball*, 77 Atl. 405, to be the highest possible degree of prudence, thoughtfulness, and diligence, and the employment of the most exact and reliable safeguards consistent with the reasonable conduct of the business, in order that human life may not be exposed to the danger following from the substitution of deadly poisons for harmless medicines. As appears by the note appended to this case in 29 L.R.A.(N.S.) 900, there is no conflict of authority as to the duty required of a druggist in his dealings with his customers. All the decisions support the principle enunciated in *Tremblay v. Kimball*, that while the law requires of a druggist only reasonable and ordinary care in compounding prescriptions, in selling medicines, and in performing the other duties of his profession, such care with reference to him means the highest degree of prudence, thoughtfulness, and diligence, and is proportioned to the danger involved; and that a breach of such duty would be negligence rendering him liable for injuries resulting therefrom.

Evidence—corporate books—privacy.—It is determined in the recent Washington case of *Re Bolster*, 110 Pac. 547, that the officers of a corporation cannot refuse to produce its books in court for inspection, in response to a subpoena in a cause

in which the matter contained in them is material, on the theory that the privacy with which its business is carried on is a trade secret, which it is entitled to protect from the inspection of strangers. This decision is accompanied in 29 L.R.A.(N.S.) 716, by a note collating the cases upon refusal to produce books or papers in response to subpoena, upon the ground that they contain private matter.

Evidence—expert testimony—predicating upon opinions.—In conformity with the general rule that it is not proper, in asking hypothetical questions, to incorporate in them the opinions of other expert witnesses, for the reason that an opinion of a witness must rest upon the facts, it is held in the Rhode Island case of *Kearner v. Charles S. Tanner Co.* 76 Atl. 833, annotated in 29 L.R.A.(N.S.) 537, that hypothetical questions to expert witnesses cannot be predicated upon the opinion of witnesses as to the possible cause of an explosion in a starch factory.

Indemnity—insurance—physical capacity—right to recover.—An injury which wholly incapacitates a manual laborer from performing any and every kind of business which he is able to do or capable of engaging in is held in the Arkansas case of *Industrial Mut. I. Co. v. Hawkins*, 127 S. W. 457, 29 L.R.A.(N.S.) 635, to be within the terms of a policy providing an indemnity for an injury which shall wholly disable and prevent him from prosecution of any and every kind of business, although the injury would not prevent his doing mental work if he was fitted to do it.

This decision is in accord with the great weight of authority as set forth in the note in 38 L.R.A. 529, on what constitutes disability within the meaning of accident or health policies, and the supplemental note thereto in 23 L.R.A.(N.S.) 352. This case illustrates clearly the unjust and unreasonable extent to which the courts would be required to go if a literal construction was given to the language used. The intention of the parties in making the contract is the question of importance to be considered. It clearly never was within the contem-

plation of the insured, an ignorant day laborer, when he entered into the contract, that he should not be entitled to receive benefits providing the injury received left him in such a condition that, upon acquiring an education, he might follow some vocation requiring only mental labor. And it is almost equally as clear that the insurer had no such understanding at the time that the policy was issued.

Marriage—solemnization—person under age.—The decision reached in the recent New Mexico case of *Territory v. Harwood*, 110 Pac. 556, that ignorance by the officiating officer that the parties married by him were under age constitutes no defense to a prosecution for unlawfully uniting them in marriage, is supported by the few cases which have passed upon the question, as appears by the note appended to the report of the *Harwood Case* in 29 L.R.A.(N.S.) 504.

Master—act of chauffeur—disobedience of orders.—The responsibility of the owner of an automobile for the negligence of his chauffeur while the car is out at the direction of a member of his family, but in disobedience to the owner's orders, seems to have been considered for the first time in *Moon v. Matthews*, 227 Pa. 488, 76 Atl. 219, 29 L.R.A.(N.S.) 856, holding that the mere fact that a chauffeur in taking out his master's automobile in obedience to a command of the master's family, for the entertainment of friends and guests of the family, disobeys the master's command not to take out the car unless the master accompanies it, does not show that he is acting outside the scope of his employment, so as to relieve the master from liability for injury done by the negligent handling of the car.

Master—mooring raft in river—duty to supervise.—The question of the duty of the master to furnish a competent superintendent where the work to be done by the servant is complicated and also dangerous has been passed upon by but few cases; yet there appears to be a well-defined rule to the effect that the master will be held liable for injuries to a serv-

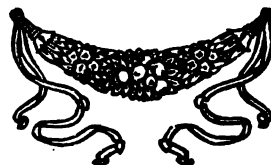
ant caused by the master's failure to furnish a competent superintendent where the work is complicated and dangerous, and requires, in order to be done with safety, the supervision of an experienced and competent superintendent. Thus, it is held in the recent Washington case of *Engelking v. Spokane*, 110 Pac. 25, annotated in 29 L.R.A.(N.S.) 481, that a master must furnish a skilled superintendent, where he directs common laborers to construct a raft and moor it in the current above falls in a river as a platform upon which to perform labor, failure to do which will render him liable for the death of the laborers, in case the current tears the raft from its moorings and sweeps them over the falls.

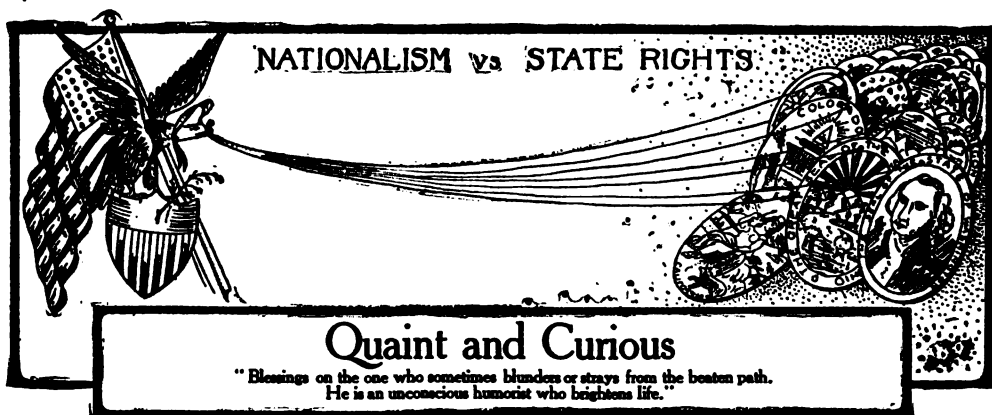
School—religious exercises—public funds.—Requiring school children to listen to the reading of passages of the King James' version of the Bible, and to join in repeating the Lord's Prayer and in singing hymns, is held in *People ex rel. Ring v. Board of Education*, 245 Ill. 334, 92 N. E. 251, 29 L.R.A.(N.S.) 442, to violate their constitutional right to the free exercise and enjoyment of religious profession and worship. It is also determined that the reading of the King James' version of the Bible, repeating the Lord's Prayer, and singing hymns as part of the exercises of a public school, violates a constitutional provision forbidding the appropriation of any public fund or the donation of money by the state in aid of sectarian purposes. This is apparently the only case which has passed upon the right to give religious instruction or exercises in public schools, decided since *Church v. Bullock*, 16 L.R.A.(N.S.) 860, to which is appended a note upon the subject. From the cases there collated it appears that the courts are not agreed as to what religious exercises or

instruction in public schools are within the prohibitions of the various state Constitutions, defining religious liberty, and forbidding the use of public moneys for religious teaching, or for the support of religious sects or societies.

Telegraph—delivery of message by telephone.—The question of the duty of telegraph companies to deliver messages by telephone has not been frequently before the courts for decision. The case of *Western U. Tele. Co. v. Price*, 137 Ky. 758, 126 S. W. 1100, annotated in 29 L.R.A.(N.S.) 836, holds that a telegraph company which receives an important message after the hours during which it maintains a messenger service must, in case it is connected with the residence of the addressee by telephone which it can use without expense, make reasonable effect to deliver the message by that means.

Usury—loan of bonds.—The reservation of more than the legal rate of interest for the loan of bonds which are subject to fluctuation on the market is held in *Title Guaranty & S. Co. v. Klein*, 178 Fed. 689, not within a statute making void any contract by which shall be reserved more than the legal rate for the loan or forbearance of money, goods, or other things in action. From the note appended to this case in 29 L.R.A.(N.S.) 620, it appears that the cases are almost unanimous in holding that the usury laws do not apply to loans other than of money, so long as they do not constitute a shift or cover for a loan of money. It also seems that the usury statutes are inapplicable, when the subject-matter of the loan is of fluctuating value, and the amount of profit derived depends upon contingencies.





No Nolle Pros. for Her.— "I'll *nolle pros.* this case," said an assistant city attorney in St. Louis, when a negress was arraigned in Dayton street police court recently, on a charge of having discharged firearms. The defendant didn't want to hear any more, for *nolle pros* she understood to be a lawyers' term for "hanged by the neck." She fled from the court room, startling the whole neighborhood with her screams. She was almost white from fear when the police captured her and brought her back to the court. After learning that the *nolle pros.* set her free, she departed gleefully.

"Ah sho' thought Ah was gonna git hung," she said.

The Lure of the Spheroids.— Elebristo Gonzales, the sixteen-year-old husband of Margarita Gonzales, fourteen years old, got a hearing in the juvenile court, Los Angeles, charged with failing to support the wife of his infancy. The two children were married several months ago, in San Miguel, Mexico. An officer of the Humane Society said the young husband has done little since he reached the city except to play marbles, winning the title of champion in that game at the Alameda Courts. The lure of the spheroids had caused him to forget the responsibilities of life and the necessity of providing for his own. It was evidently a pronounced case of the "marble heart." Judge Wilbur released the boy on his promise to attend to his duties.

Functus Officio.— The final report made by a guardian in Iowa in response to a request by the clerk of probate is so un-

usually brief as to deserve mention. It reads: "Said ward——has become of age, and is able to take care of his own interests. Therefore my guardianship has expired."

He Mortgaged His Heifer.— Not every roan calf has attained the distinction of being mortgaged by use of all the time-honored phraseology employed where real estate is encumbered. But this is exactly what happened to a heifer calf in Idaho. Perhaps the draughtsman ran out of chattel mortgage blanks; possibly he classified the animal as a chattel real, and reasoned that it was immaterial which form he followed. Anyway, this is what he wrote:

"This Indenture Made the third day of December in the year of our Lord, one thousand nine hundred and eight between A. B. of ———, County of ———, State of Idaho, part of the first part, and C. D. of ———, County of ———, State of Idaho, the part of the second part,

"Witnesseth, That the said part of the first part for and in consideration of the sum of Twelve——Dollars, do ——by these presents Grant, Bargain, Sell and Convey unto the said part of the second part, and to their heirs and assigns forever, all that certain chattel property situate in the County of —— and State of Idaho, and bounded and particularly described as follows, to-wit:

"One heifer calf; Said calf is roan color and Branded with an R on the right ribs——together with the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

"And said part of the first part hereby agree to keep the Heifer on said premises fully insured against loss by fire in some reliable fire insurance company, with loss, if any, payable to the part of the second part as mortgagee —, as — interest may appear.

"This Grant is intended as a mortgage to secure the payment of one certain promissory note—of even date herewith, executed and delivered by the said A. B. to the said part of the second part C. D.

"And these presents shall be void if such payments be made. But in case default shall be made in the payment of said principal sum—, of money or any part thereof as provided in the said note —, or if the interest be not paid as therein specified, then it shall be optional with the said part—of the second part their executors, administrators or assigns to consider the whole of said principal sum—expressed in said note —as immediately due and payable; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same according to law, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said promissory note—, together with the costs of foreclosure suit, including— counsel fees and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said second part their heirs, executors, with the interest on the same, rendering the overplus of the purchase money (if any here shall be) unto the said —part of the first part,—heirs, executors, administrators or assigns.

"In Witness Whereof, the said part of the first part has hereunto set his hand —and seal—the day and year first above written.

Signed, Sealed and Delivered in the presence of ———A. B. (Seal)

A Legal Zoo.— Animals of various kinds have been having their day in court.

That no fish were on the ark with "Father Noah," and that therefore the

creature is not an animal, was the position taken by a St. Louis city attorney in nolle prossing the case against a peddler accused of cruelty to animals. The case was dismissed over the emphatic protest of Judge Pollard, who argued that the dictionary defined a fish as an animal. The peddler was charged with advertising his fish by displaying a live animal from a string on his cart, that its flopping might attract the eyes of prospective purchasers.

"A fish is not an animal," rules the associate city attorney of St. Louis, says the Cleveland Plain Dealer, "because there wasn't any fish in Noah's ark. According to the same line of reasoning, a lawyer is not a righteous person."

There can be no doubt, however, that a monkey is an animal of high degree. A five pound simian slumbered peacefully in his cage at the Kentucky State Fair Grounds a few months ago, while four prominent local attorneys fought a wordy battle in the magistrate court as to whether state fair visitors should be permitted to amuse themselves by throwing balls at the monkey. To champion his cause and see that justice was done to little Jocko, half a dozen prominent Louisville club women were present. After an hour and a half of testimony and legal oratory about Darwin, "monkey prostration," "nervous fatigue," and other things that the ordinary layman would not believe a monkey was heir to, the magistrate decided that the owner should pay a fine of \$25 for letting the visitors to the fair make his monkey a target for rubber balls.

That is is against the Ohio law to hold bald-headed eagles in captivity was the ruling received from Attorney General Hogan by Elmer Fawcett, a Logan county farmer. Fawcett had one of the birds, and the Attorney General ordered its release. The big eagle was taken after a fierce fight several weeks ago. Fawcett discovered it with its talons fastened in the woolly back of a lamb, seized a pitchfork, and captured the bird after a lively struggle. The attorney general holds that a native eagle cannot be held captive in Ohio. This ruling ought to stand. To permit the "bird of freedom," the storied emblem of our national great-

ness, to pine in captivity, would seem like sacrilege.

Can a goose suffer from mental anguish? Has a goose feelings? If so, where are they located, or not located?

These are questions which are puzzling a North Carolina justice in arriving at conclusions of fact and law in a goose case presented for his consideration by a warrant sworn out by officers of the Society for the Prevention of Cruelty to Animals.

In a certain barnyard an agent of the S. P. C. A. discovered a goose whose webbed feet were nailed to a board, as one stage in the process to make its liver become *pate de foie gras*.

A meeting of the society was held to consider the case, and the president, who had been in conference with physicians, encyclopedias, lawyers, humanitarians, and others, insisted that, in addition to the bodily injury, there was also the question of mental anguish to be considered. Accordingly, the society voted to hale the goose's owner to court to decide a goose's right.

The much disputed question, "Is a hen a bird?" which the treasury officials passed up as hopeless, has been presented to the new court of customs appeals. The question is, If birds' eggs are free under the tariff, and hens' eggs are taxed five cents a dozen, why isn't a hen a bird? An importer who paid the duty wants to know.

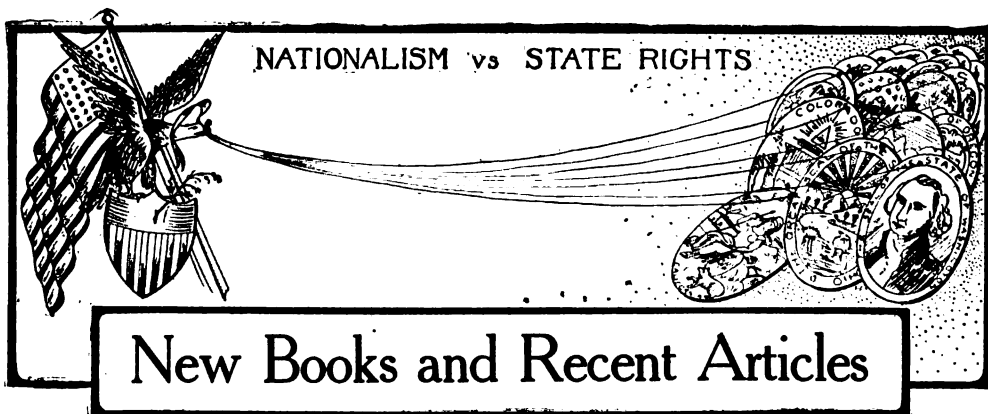
"I direct that after my demise my parrot be chloroformed," says a will not long since probated in Washington, District of Columbia. It does not appear whether the executor carried out the request. The testatrix may have thought the painless exit of "Poor Poll" preferable to a continued existence in dependence upon the charity of strangers. Or she may have been moved by the sentiment which animated Norse and Indian chiefs to direct the sacrifice on their tombs of their war horses, wives, and slaves, that they might take their most cherished possessions with them into the land of shades.

Widows—Grass and Sod.—On a recent trial a witness denied that she had told a certain man when he met her that she was a widow. "I told him I was a grass widow," she asserted. The lawyers argued as to the exact meaning of that term. Thereupon Justice Guy handed down this luminous definition:

"There are two kinds of widows—grass and sod. The sod species—sometimes known as the common or garden variety of widow—is relieved of the burdens of a spouse. The grass widow has a husband on her hands, but cannot put said hands upon him.

Cure by Silence.—Two Minneapolis boys were recently ordered by Judge C. L. Smith in municipal court not to speak to each other for a year. In this instance the court probably had in mind the admonition that "evil communications corrupt good manners." The boys were under arrest, charged with disorderly conduct. The probation officer told the judge that he had received complaints about their conduct. After listening to the officer's story, Judge Smith sentenced the boys to sixty days in the workhouse. He suspended sentence, and put them on the most rigid term of probations ever laid down in Hennepin county. Judge Smith told the boys that they must not speak to each other during the period of probation; that they must stay home nights, keep away from pool rooms and saloons, and attend night school.

The New York supreme court justice who issued an injunction restraining a farmer from speaking to his wife for thirty days, pending a hearing on the wife's application for alimony and counsel fees in her suit for separation, doubtless proceeded on a different theory. He may have had in mind the lover's philosophy, that absence makes the heart grow fonder. The defendant, accompanied by his counsel, visited the domicile of his wife and daughter several times while the injunction order was in force, and ate meals with them, but the rule of "silence" was rigidly obeyed.



Recent Books of Interest to Lawyers

"Celebrated Criminal Cases of America."
—By Captain Thomas S. Duke (The James H. Barry Company, San Francisco, Cal.). \$3 net. 657 pp.

This volume may be called a criminal history of the United States for the last sixty years or more. It records in an interesting manner a series of noted crimes, each of which in its day attracted wide attention and comment. In all, one hundred and ten cases are set forth, giving with historical fidelity the details of murders, robberies, forgeries, and swindling exploits perpetrated by the greatest criminals of modern times.

In his introduction, Captain Duke explains that his effort was intended as a compendium of cases illustrating the unusual craft and cunning of the criminal, rather than an attempt at style, and hints at a theory that crime in most cases is hereditary. To support this he has, where possible, given a short sketch of the antecedents of the criminal. As an instructive work it makes a sincere effort to deal with the elaborate police system of the country, and gives an insight into the machinery of justice.

There are over one hundred excellent photographs of notorious criminals, in addition to pictures of celebrated American detectives.

The concise and impartial manner in which the facts of each case are presented renders the work of value to lawyers, criminologists, police officials, and psychologists, as well as to the general reader.

This book, although not didactic, contains the unspoken moral that the wages of crime are pitiful, and that retribution follows the wrongdoer like a shadow.

Crime is essentially base and brutal. There is nothing so likely to strip notorious villains of the glamour of romance with which they may have been clothed by the unthinking, as a plain recital of the events in which they participated. The bandit, bravo, or thug cuts but a sorry figure at best, and in the light of unvarnished facts is despicable.

Captain Duke has performed a valuable service in impartially depicting the criminal as he is. He has also portrayed some characters we may admire, the resolute, undaunted men who, without thought of fame or hope of reward, took their lives in their hands, and too often lost them in defense of law and order.

Atwell's "Federal Criminal Law."—1 vol. \$5.

Elliott, "Roads and Streets."—3d ed. 2 vols. Buckram, \$13.

Street, "Personal Injuries."—(Texas) 1 vol. \$6.

Stewart, "Taxation."—(Texas) 1 vol. \$6.

"Vermont Digest Annotated."—(1789-1910), covering N. Chipman to vol. 83 Vermont. 3 vols. Buckram or sheep, \$21.50.

Recent Legal Articles in Journals and Magazines

Aliens.

"The Immigration Act and Returning Resident Aliens."—59 *University of Pennsylvania Law Review*, 359.

Appeal.

"The Establishment of Judicial Review, II."—9 *Michigan Law Review*, 283.

"The English Court of Criminal Appeal."—5 *Illinois Law Review*, 389.

Attorneys.

"Contingent Fees."—42 *National Corporation Reporter*, 20.

"Codes of Ethics and Their Enforcement."—42 *National Corporation Reporter*, 46.

"The Practice of Law in Quebec Province, Canada."—9 *Michigan Law Review*, 317.

Aviation.

"Aviation and Future Legislation."—36 *Law Magazine and Review*, 176.

Bankruptcy.

"Bankruptcy Law."—4 *Maine Law Review*, 132.

Banks.

"Senator Aldrich's Reserve Association Plan."—28 *Banking Law Journal*, 105.

Bills and Notes.

"The Negotiable Instruments Law."—28 *Banking Law Journal*, 115.

Burial.

"Rights of Burial."—75 *Justice of the Peace*, 62.

Codes.

"The Need for Codifying the Law of England."—36 *Law Magazine and Review*, 129.

Commerce.

"The Pseudo-Doctrine of the Exclusiveness of the Power of Congress to Regulate Commerce."—20 *Yale Law Journal*, 297.

"The Gibbons v. Ogden Fetish."—9 *Michigan Law Review*, 324.

Conservation.

"Some Recent Experiments in Human Conservation."—122 *Harper's Monthly Magazine*, 515.

Conspiracy.

"Conspiracy in Civil Actions."—36 *Law Magazine and Review*, 151.

Constitutional Law.

"Administrative Exercise of the Police Power."—24 *Harvard Law Review*, 268.

"Does an Amendment in the Law, Changing the Manner of Apportioning Assessments for Municipal Improvements, Impair any Vested Right of Either the Contractor, the Property Owners, or the Municipality?"—72 *Central Law Journal*, 97.

"A Convention to Amend the Constitution."—193 *North American Review*, 369.

Corporations.

"National Incorporation."—5 *Illinois Law Review*, 414.

"National Control of Corporations."—11 *The Brief*, 3.

"Corporate Personality."—24 *Harvard Law Review*, 253.

"Norman Corporations v. Continental Monopolies—Brief for Plaintiffs."—72 *Central Law Journal*, 132; 11 *The Brief*, 65.

Counterfeiting.

"Great Cases of Detective Burns: The Monroe-Head Counterfeit."—36 *McClure's Magazine*, 542.

Courts.

"English and American Administration of Justice."—17 *Case and Comment*, 487.

"A Non-Partisan Judiciary."—4 *Lawyer & Banker*, 30.

"The Gilbert Court Bill."—42 *National Corporation Reporter*, 45.

Covenants and Conditions.

"Promises and Covenants."—36 *Law Magazine and Review*, 141.

Criminal Law.

"Criminal Statistics, 1909."—75 *Justice of the Peace*, 74.

"The Case against Patrick."—17 *Case and Comment*, 498.

"The Unwritten Law."—17 *Case and Comment*, 503.

"The Third Degree Illegal."—4 *Lawyer and Banker*, 6.

"Indictable Offense and Summary Jurisdiction."—75 *Justice of the Peace*, 50.

"The Discharge of a Jury before Verdict."—75 *Justice of the Peace*, 62.

"Reasons for Retaining the Death Penalty."—42 *National Corporation Reporter*, 21.

Criminal Slang.

"Criminal Slang."—17 *Case and Comment*, 506.

Debtor and Creditor.

"Mercantile Co-operation for Legal Self-Defense."—5 Illinois Law Review, 431.

Divorce.

"The Evidence of Divorce."—4 Maine Law Review, 103.

Elections.

"The Present Status of Direct Nominations."—5 Illinois Law Review, 403.

"Evidence—Issue of Forgery."—72 Central Law Journal, 135.

Homicide.

"Insanity as a Defense in Homicide Cases."—17 Case and Comment, 491.

Husband and Wife.

"When, as between Husband and Wife, does Either, as Disseisor, Acquire Title?"—4 Lawyer and Banker, 36.

Indictment.

"The Seventeenth Century Indictment in the Light of Modern Conditions."—24 Harvard Law Review, 290.

Law.

"The Humanity of the Law."—17 Case and Comment, 495.

"The Mission and Objects of Philosophy of Law."—5 Illinois Law Review, 423.

Law Reform.

"The Cry for Law Reform."—20 Yale Law Journal, 292.

License.

"Licenses for Male Servants."—75 Justice of the Peace, 50.

Master and Servant.

"Workmen's Compensation Act."—42 National Corporation Reporter, 9.

"Model Employers' Liability Act."—4 Lawyer and Banker, 17.

Monopoly.

"The Prevention of Industrial Monopolies."—4 Lawyer and Banker, 42.

Moral Duty.

"The Moral Duty to Aid Others as a Basis of Both Civil and Criminal Liability."—17 Kansas Lawyer, 171.

Navy.

"Will Congress Put Our Navy on the Sea?"—36 McClure's Magazine, 523.

Negligence.

"Trespassers will be Compensated."—30 Law Notes (Eng.), 50.

"The Rule in Rylands v. Fletcher."—

59 University of Pennsylvania Law Review, 373.

Panama Canal.

"Canal Zone Laws and Judiciary."—11 The Brief, 49.

Peace.

"The Dawn of the World's Peace."—21 The World's Work, 14128.

Pensions.

"The Pension Carnival: 'Correcting' Records of the Dishonorably Discharged."—21 The World's Work, 14159.

Poor and Poor Laws.

"The Prevention of Destitution."—36 Law Magazine and Review, 181.

"Children and Residential Settlements."—75 Justice of the Peace, 73.

Practice and Procedure.

"Reforming Practice Act."—43 Chicago Legal News, 237.

"Address of Mr. Edgar B. Tolman, President of the Illinois Conference on the Reform of the Law of Procedure and Practice."—43 Chicago Legal News, 238.

Precedent.

"The Decadence of the System of Precedent."—24 Harvard Law Review, 298.

Principal and Agent.

"The Liability of an Agent to Third Persons in Tort."—20 Yale Law Journal, 239.

Public Lands.

"Southern Pacific Lands."—4 Lawyer and Banker, 11.

Treaties.

"The Sanctity of Treaties."—20 Yale Law Journal, 268.

Trusts.

"Some Considerations Concerning Investments by Trustees."—24 Bench and Bar, 57.

Uniform Legislation.

"The Relation of Judicial Procedure to Uniformity of Law."—72 Central Law Journal, 114.

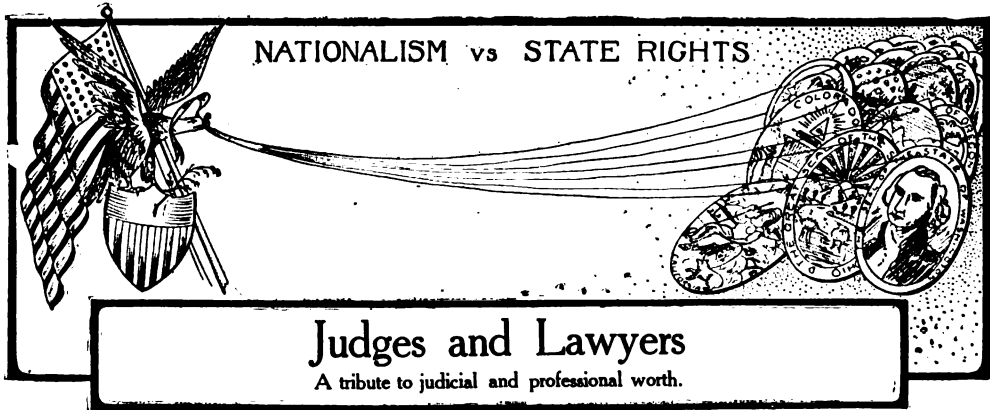
Unwritten Law.

"The Unwritten Law."—17 Kansas Lawyer, 163.

Witnesses.

"Cross-Examination of the Perjured Witness."—17 Case and Comment, 509.

"Expert Appointed by the Court."—42 National Corporation Reporter, 9.



Colorado's U. S. Senator and Prominent Mining Lawyer Dies

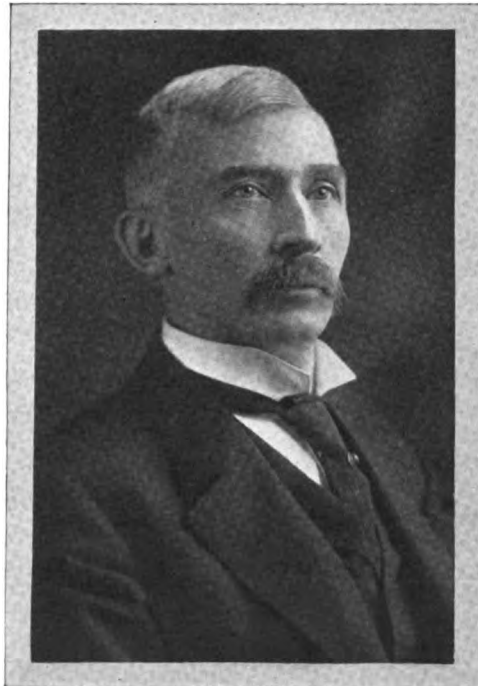
CHARLES J. Hughes, Jr., junior United States Senator from Colorado, died at his home in Denver on January 11th, after a long illness.

Mr. Hughes was born in Kingston, Missouri, February 16, 1853, his father being an attorney, and a descendant from Kentucky pioneers who came there from Virginia.

Senator Hughes graduated from Richmond College in 1871, and studied at the University of Missouri in 1872 and 1873. In after years he received the degree

of LL.D. from both the University of Missouri and the University of Denver.

A thorough student, the future Senator supplemented his education with studies in higher mathematics, languages, political economy, and the sciences most intimately connected with his legal practice, including engineering, chemistry, geology, ore deposition, irrigation, and hydraulic engineering.



HON. CHARLES J. HUGHES, JR.

After graduation, Mr. Hughes spent five years in teaching public schools and as a college professor, but abandoned teaching for the practice of the law in 1877, coming in that year to Colorado.

He built up an extensive practice not limited to any field or class of clients, but embracing all save criminal law, which he avoided whenever possible. His success in law was the reward of his record as a careful, painstaking lawyer in counsel and preparation of cases for trial, for

strength, force, and earnestness in the court room, a remarkable mastery of the difficult art of cross-examination, and a clear, forcible, and convincing address in argument.

From the beginning, Senator Hughes gave special attention to mining and irrigation litigation. He delivered an address on the Evolution of Mining Law before the American Bar Association in

Denver, August, 1901. The Senator lectured on the same subject before the Harvard Law School and was professor of mining law in the Denver Law School. He frequently appeared before the United States Supreme Court.

The Senator was counsel and successful in the Durant, Emma and Aspen litigation, which went far to settle the important apex law, the decision upon which was approved in the United States Supreme Court. Few great mining or irrigation suits in the Middle West or Rocky Mountain region have been tried in which Senator Hughes has not been a participant as a leading counsel.

Although always taking great personal interest in politics, Mr. Hughes declined to become a candidate for any office until he was indorsed in 1908 by the Democratic state convention for United States Senator and elected to that office by the next legislature. He had been, however, a Democratic presidential elector in 1900.

Tennessee Judge Dies

Judge John M. Taylor, of the court of civil appeals, died on February 17th, at his home at Lexington, Tennessee. He was seventy-two years of age. His father was a Virginian, and his mother came from North Carolina and the judge was wont to boast that he was a son of Tennessee and a grandson of Virginia and the old North State. He fought for the cause of the South at Bowling Green and at Shiloh under General Johnston. At Perryville he was badly wounded, being shot through the thighs, and left on the battlefield for dead. He was crippled for life in this battle. A graduate of Cumberland University, of the class of '60, he resumed the practice of law at Lexington after the war. He was mayor in 1869, and was a delegate to the constitutional convention of 1870. He was attorney general of the eleventh judicial circuit eight years; a member of the legislature of 1881; member of the national Congress in 1882-84; Democratic elector in 1892; judge of the eleventh judicial circuit 1895-1900; and was in 1902 elected to the appellate bench, where he served until his death.

DANIEL W. Bond, justice of the superior court of Massachusetts, died at his home in Waltham on January 22d. He had not been ill long, for he presided over the recent trial of Hattie Le Blanc, in the famous Glover murder case. That was his last important judicial service.

Judge Bond, in the Le Blanc trial, also had the distinction of trying the first murder case, alone under the new law in Massachusetts, which reduced the number of presiding justices from two to one in capital cases.

Daniel W. Bond was born in Canterbury, Connecticut, on April 29, 1838. He spent his boyhood in his native town, working for farmers out of school terms, and attending the public schools in the winter season.

It was in 1862 that he received the degree of LL. B. from the Law School of Columbia University, and in the same year he was admitted to practise at the bar. From 1877 to 1889 he served as district attorney for the northwestern judicial district of Massachusetts, combining Hampden and Franklin counties.

It was in October, 1890, that he was appointed by Governor Brackett a justice of the superior court of the commonwealth, in which capacity he has presided at many trials of large public interest.

Judge Bond was an unconventional justice. He had large individuality, which at times might seem to be eccentricity. He was a hard-working, conscientious man, swerving, if at all, toward "the quality of mercy." He preferred to represent humanity, as well as the majesty of the law, though he could be as unyielding as a granite wall against what he believed to be trickery or unfair practices.



DANIEL W. BOND

Rhode Island's Chief Justice



EDWARD C. DE BOIS

Church Du-bois, son of Edward and Emma (Davison) Church, was born in London, England, where his parents were then temporarily residing, January 12th, 1848. His father, a direct descendant of Colonel Benjamin Church, of Colonial and Indian war fame, the son of Edward and Marie (Dubois) Church, in the year 1857, being about to publish his second

French grammar, having published his first, entitled, "Church's French Spoken" in the year 1844, concluded that a French name was desirable for the author of a French book, and assumed for himself and family the family name of his mother, Du-bois, since retained by his children. The subject of this sketch was educated at the Collegiate and Commercial Institute, familiarly known as Russell's Academy, New Haven, Connecticut, the High School at Pawtucket, Rhode Island, and at the Friends' Academy, New Bedford, Massachusetts. He studied law in Boston, Massachusetts, and was there admitted to the bar March 19, 1870. In 1872 he was appointed clerk of the police court in Haverhill, Massachusetts, which position he held until November, 1877, when he resigned the office and removed to Providence, Rhode Island. In May, 1878, he removed to East Providence, Rhode Island, where he has since resided. He has served as state representative and senator from that town, and was its town solicitor for several years. He was Attorney General of the state of Rhode Island from 1894 to 1897. He came upon the bench of the supreme court as an associate justice in March, 1899, and became chief justice in January, 1909.

Nevada's Chief Justice

HONORABLE James G.

Sweeney is a native of Carson City, Nevada. He is a graduate of the Carson High School, St. Mary's College, and Columbian University, Washington, District of Columbia. Judge Sweeney won his way upward in the face of difficulties. For years he worked in the Comstock mines, and while so employed occupied his leisure time in the study of law, and was admitted



JAMES G. SWEENEY

to the bar of his native state at the age of twenty-one years. Afterwards he continued working in the mines until he had earned sufficient funds to pay his way through the Columbian Law University, from which he graduated with high honors.

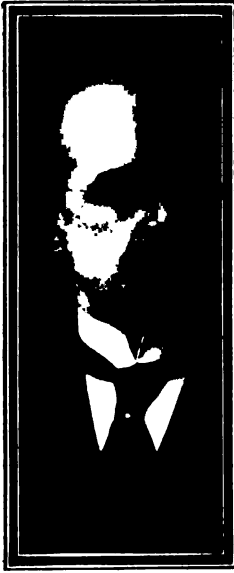
Himself a miner by occupation, it is easy to account for Judge Sweeney's interest in the welfare of the miners. The present eight-hour law for the miners of Nevada was secured largely through his efforts when in the legislature, and successfully defended by him when attorney general.

He has served Nevada in her legislative departments as representative from Ormsby county; in her executive department for four years as attorney general. At the time of his election as attorney general, Chief Justice Sweeney was but twenty-four years of age, being the youngest attorney general ever elected in the United States, and is probably the youngest Chief Justice of any court of last resort in the United States.

Politically, Judge Sweeney has served as chairman of the democratic party of Nevada and is a firm believer and advocate of the principles of the democratic party as enunciated by Jefferson.

Chief Justice Sweeney is now serving his fifth year on the supreme bench.

Delaware's Chief Justice



JAMES PENNEWILL

“JAMES Pennewill, the son of Simeon and Annie E. Curry Pennewill,” says Conrad’s History of Delaware, “was born near Greenwood, Sussex county, Delaware, June 16, 1854. His father, like his grandfather before him, was a prosperous farmer in Sussex county. James Pennewill received his youthful education in the public schools of Greenwood and Bridgeville, and after spending three years at the academy of Professor William A. Reynolds, in Wilmington, Delaware, he entered Princeton University, from which institution he graduated in 1875. He immediately began reading law under the Honorable Nathaniel B. Smithers, and was duly admitted to the Delaware bar October 28, 1878.” He began the practice of his profession in Dover, and so continued until June 14, 1897, at which time, under the reorganization of the Delaware judiciary pursuant to the new Constitution, he was made an associate justice of the supreme court. At one time during his practice he was associated with Honorable George V. Massey, and later with Honorable James L. Wolcott. While a justice of the supreme court, he was the official law reporter, and produced six volumes of Pennewill’s Reports.

December 5, 1888, Mr. Pennewill was married, at Dover, to Alice, daughter of William G. and Temperance A. Hazel, of that town.

June 15, 1909, he was appointed Chief Justice of the Supreme Court of the State of Delaware, which position he still occupies.

Chief Justice Pennewill never held any political office, although at one time,

before his appointment to the bench, he was chairman of the Republican committee of Kent county, and later he became chairman of the Republican state central committee. Four years ago, Judge Pennewill was his party’s choice for United States Senator, and he would have been elected for a full term as Senator from Delaware had he consented to his selection.

Oldest Member of Boston Bar Dies

Thomas H. Russell, of the law firm of Russell, Moore & Russell, the oldest member of the Boston bar, and the senior member, as well as a founder, of the Boston Bar Association, died on February 24th, in his ninety-first year.

Mr. Russell was born in Princeton, Massachusetts, in 1820. He was graduated from Harvard College with the class of 1843, and from the Harvard Law School two years later. With his brother, the late Charles T. Russell, he early formed a partnership which continued more than fifty years. Charles Theodore Russell, Jr., became a partner in 1875, as did his brother, the late William E. Russell, afterward Governor of Massachusetts, in 1880. Arthur H. Russell, son of Thomas H., was admitted to the firm in January, 1884.

After the death of his brother, Mr. Russell continued his practice as an advising lawyer until very recently. He had maintained his law offices continuously in the Brazer building on State street, of which he was a trustee, from 1845, or nearly sixty-six years, except during the time of its reconstruction.

For sixty years he had been connected with the Central Congregational Church. For many years he was on the board of visitors and afterward upon the board of trustees of the Andover Theological Seminary, and was actively concerned in the defense of the professors there at the time of the so-called “heresy trials.”

Former Judge David Fowler, of the Maryland court of appeals, died suddenly in Baltimore on February 5th.

Judge Fowler was born in Washington county, Maryland, in 1836, and was the son of the late Robert Fowler, at one time

treasurer of Maryland. He was educated at the famous St. James College, near Hagerstown.

He was admitted to the Baltimore Bar in 1862. He received some of his inspiration in the law from two of the brightest minds at the Maryland bar,—Reverdy Johnson and Charles M. Gwinn, with both of whom he was associated as a young lawyer.

He was first elected associate judge of the third judicial circuit in November, 1882, and served in that capacity until August, 1889, when he was appointed chief judge by the late Governor Jackson. At the following general election, in November of the same year, he was elected for the full term of fifteen years, and when his term expired, in 1904, he was

appointed by Governor Warfield to serve until the November election of 1905.

Judge Fowler's retirement from the court of appeals was due entirely to his proximity to the age limit,—seventy years—for no man stood higher in the estimation of the people of the state.

He was a survival of the old-school lawyer, solidly based in the classics, and obtaining his legal training in the office of a great law firm and in actual experience, he was one of the quickly passing "old guard" of the legal fraternity, to which the law school was a new development. Incidentally, Judge Fowler was one of the number of unusually brilliant young lawyers who were graduated by that famous old Baltimore firm, Brown & Brune.

Brilliant Minnesota Judge and Author Called

THE death of Judge Jaggard, associate justice of the Minnesota supreme court, at Bermuda, February 13th, was a distinct loss to the state. He was a man of unusual legal and mental ability, conscientious and thorough, and his personality was charming. He took a broad view of legal questions, and his decisions were rendered only after great care and research.

He was born at Altoona, Pa. June 21, 1859, and took the bachelor of arts degree at Dickinson college in 1879, and master of arts in 1882. He took the LL.B. degree at the University of Pennsylvania in 1882, and the LL.D. degree was conferred upon him in 1906.

Justice Jaggard was a lecturer at the law school at the University of Minnesota, being a member of the faculty since 1892. He was district court judge of the second Minnesota district, and had been justice of the state supreme court since 1905.

He was the author of several books on torts, taxation in North and South Dakota, taxation in Iowa, and also a history of the anomalies in the law of libel and slander, as well as articles and addresses on false imprisonment and on malicious prosecution.

Justice Jaggard was a very lovable man and an earnest student. He had read everything, and at a banquet or a social gathering could extemporize by the hour on almost any subject, and do so well enough to delight his hearers by the beauty of his ideas and amaze them by the wealth of his learning. Nothing apparently appealed to him so much as to stand before a gathering, and let his mind roam over some subject, allowing his hearers to follow the peculiar trend of his thoughts.

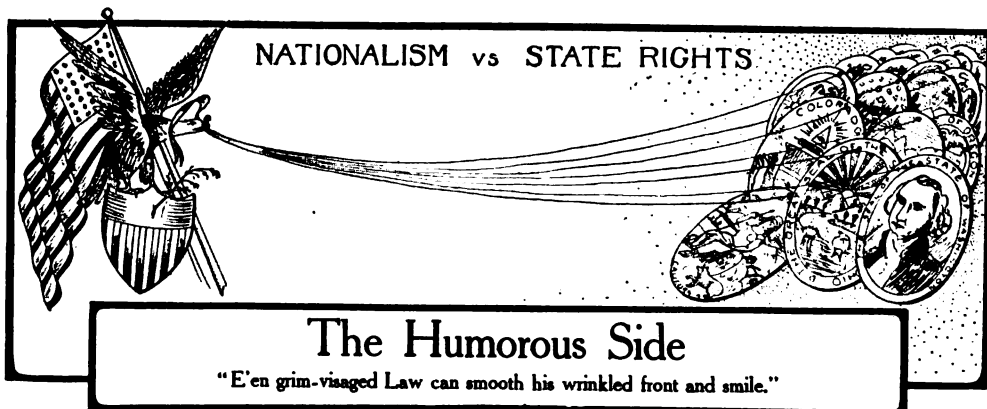
He was noted particularly for his fishing trips. When not making a tour in this or some other country, he spent his vacations in some secluded haunt that would have delighted Izaak Walton. There he rested from the heavy strain of his judicial duties. But these were also "thinking" trips. Some of his opinions were thought out amid leafy silences or on the broad reaches of some winding river.

One who knew him writes that "one Christmas time I desired to buy a copy of the Complete Angler, but found that Judge Jaggard had gone about and purchased every copy in the town for gifts to his friends. He usually gave two or three hundred remembrances of this kind, *i. e.*, books."

Although his opinions, which sometimes partook of metaphysical or psychological inquiries into the reasons of the law, evoked criticism from lawyers who could not appreciate such a departure from the conventional pattern, they may confidently be said to have been well written, accurate, and exhaustive.



Edwin A. Jaggard



The Humorous Side

"E'en grim-visaged Law can smooth his wrinkled front and smile."

A Bad Trio.—An old offender was recently introduced to a new county justice as "John Timmins, alias Jones, alias Smith." "I'll try the two women first," said the justice. "Bring in Alice Jones."

The Surest Place.—Speaker (warming to his subject)—"What we want is men with convictions, and where shall we find them?"

Voice—"In jail, guv'nor!"—Penny Illustrated Paper.

Here Below.—Edward Douglas White, of Louisiana, Chief Justice of the United States Supreme Court, said at a luncheon given in his honor in Washington, that corporate and political corruption will only be stopped when convictions mean ignominy and disgrace.

"At present," said Judge White, "I am afraid that convictions and fines are regarded too lightly by the big financiers of the sinning type. They remind me of John Booth, of Lafourche."

"John Booth, an old offender, was haled before a magistrate, who said to him sternly:

"I see by your record, Mr. Booth, that you have had thirty-seven previous convictions. What have you to say?"

"Booth, assuming a sanctimonious air, replied:

"Well, judge, man is not perfect," —Minneapolis Journal.

An Omitted Question.—A lawyer tells a story of an accident at a railway crossing at night, in which a farmer's cart was struck and demolished and the farmer injured, says London Tit-Bits.

"I was counsel for the railway," says the lawyer, "and I won the case for the defense mainly on account of the testimony of an old colored man, who was stationed at the crossing. When asked if he had swung his lantern as a warning, the old man swore positively:

"I surely did."

"After I had won the case I called on the old negro," said the lawyer, "and complimented him upon his testimony." He said:

"Thankee, Marse Jawn, I got along all right; but I was awfully scared, 'cause I was 'fraid dat lawyer man was goin' ter ask me was my lantern lit. De oil done give out befo' de accident."

A Prodigal Testator.—An elderly gentleman, who knew something of law, lived in an Irish village where no lawyers had ever penetrated, and was in the habit of making the wills of his neighbors. At an early hour one morning he was aroused from his slumber by a knocking at his gate, and, putting his head out of the window, he asked who was there. "It's me, your honor—Paddy Flaherty. I could not get a wink of sleep, thinking of the will I have made." "What's the matter with the will?" asked the lawyer. "Matter indeed!" replied Pat. "Shure, I've not left myself a three-legged stool to sit upon."—Argonaut.

Ex Post Facto.—Attorney General Wickersham was talking at the Lawyers' Club in New York about some of the absurd defenses that are set up in cases wherein rich young men are involved.

"Such defenses seem to indicate," he said "that some lawyers deem the public as ignorant of common law and common sense as Calhoun White was.

"Calhoun White was a southern lawyer, and once, in a case in a South Carolina court, he made frequent references to 'de ex-facto-posthole,' law.

"The judge, with a quiet smile, at last set him right.

"You mean, Mr. White," he said, 'the ex-post-facto law.'

"But Calhoun White drew himself up with dignity.

"Ah begs pawdon ob de co't," he said, in a pitying voice, but yo' honah sartinly am lame on dat ar term. Why, gents, hit am dat law wot prohibits a man from diggin' de hole arter de post am set.'"—Exchange.

He Had no Choice.—"You say you were in a saloon at the time the alleged assault took place?" a lawyer inquired of a witness at the central station the other day.

"Yes, sir, I was," the witness admitted.

"H'm," the lawyer pursued, "that is interesting. And did you take cognizance of the barkeeper at the time?"

"I don't know what he called it, sir," came the reply, with perfect ease, "but I took what the rest did."—Philadelphia Times.

Vocation and Avocation.—An attorney who was also secretary of a gas company was considerably amused at the remark of his little five-year-old daughter who told a gentleman in response to his query as to what her father did for a living, that "my father is a lawyer and sells gas."

Scorching the Lawyers.—Senator William Fiero, of Catskill, was seated about the enormous fireplace in Keeler's Hotel the other night when he told this story:

"I remember thirty years ago, when I was a lawyer, there were about fifteen or eighteen of us—all lawyers—seated about a fireplace much like this. It was a raw, wet night. A bedraggled stranger, wet to the hide, came in, tried to get accommodations, and was told there was

not a room left. The nearest other place was a mile away. Shivering, the stranger looked at the fire, but we formed such a solid line about it that he could not get near it. Finally one of the lawyers, in a spirit of frivolity, turned to him and said:

"My friend, are you a traveler?"

"I am sir. I have been all over the world."

"You don't say! Been in Germany, Egypt, Japan and all the countries in Africa and Asia?"

"All of them; been everywhere."

"Ever been in hell?"

"Oh, yes; been there twice."

"How did you find things there?"

"Oh, much the same as here—lawyers all next to the fire.'"—New York World.

One Thing He Would Not Do.—He was a county judge, old, bewhiskered, and full of dignity.

"The integrity of the bench, Sam," he said one summer afternoon, "must be upheld. I and my fellows on the bench throughout the country hold now, and have always held, that no personal friendship, no inducement can sway our minds when there is a question of making a decision."

Sam bared his very high brow to the cooling breeze, and hitched his chair a little closer to that of the upright judge.

"What would you do, judge," he asked, "if somebody offered you \$100,000 to throw a case the wrong way?"

The judge hesitated and glanced around in a casual manner to see that nobody was within earshot.

"Well, Sam," he said at last. "I wouldn't go too far to make that decision. There's one thing I wouldn't do. I would not shed blood. Of course, anything else—"

Thus was another blow struck at integrity.—Popular Magazine.

Between Lawyers.—"I won't defend a man whom I believe to be guilty."

"My boy, you musn't set your judgment up against that of the majority. I have defended plenty of men whom I believed to be guilty, but the jury decided otherwise."—Louisville Courier-Journal.



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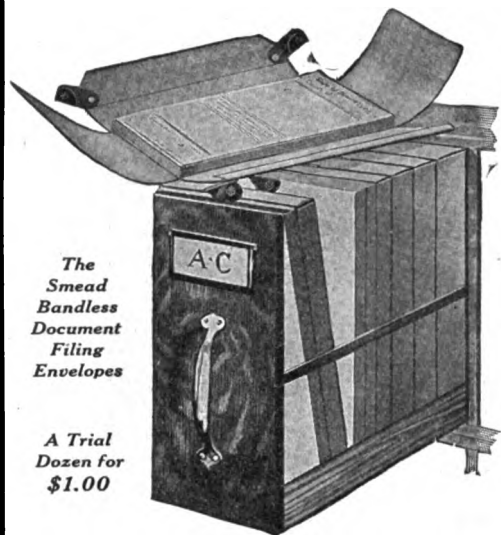
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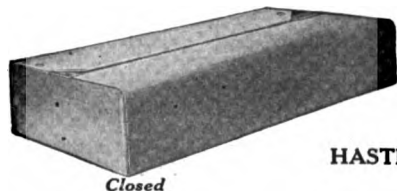
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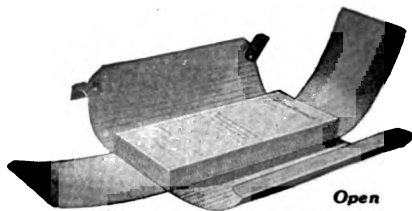
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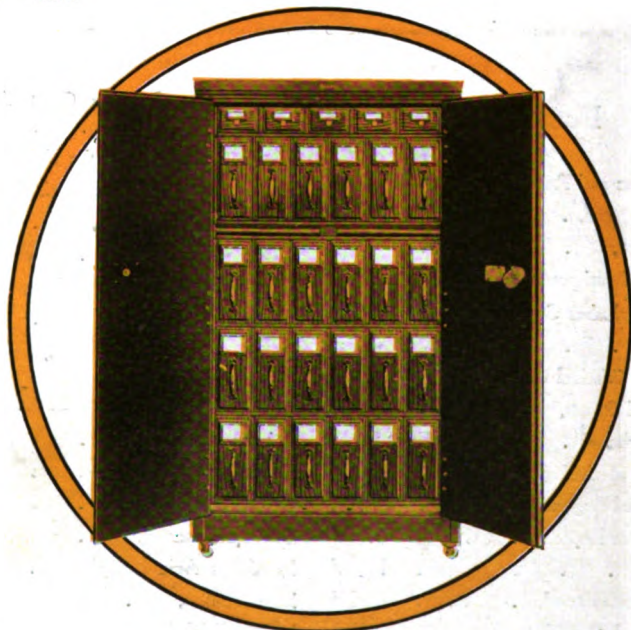
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